

In The
Supreme Court of the United States
October Term, 1992

CHARLENE LEATHERMAN, ET AL.,

vs. *Petitioners,*

TARRANT COUNTY NARCOTICS INTELLIGENCE
AND COORDINATION UNIT, ET AL.,

Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals For The Fifth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed April 16, 1992
Certiorari Granted June 22, 1992

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RELEVANT DOCKET ENTRIES

December 12, 1989	Defendants' Petition for Removal filed
December 20, 1989	Defendants' Motion to Dismiss or for Summary Judgment filed
February 1, 1990	Order granting Defendants' Motion to Dismiss is filed
February 8, 1990	Plaintiffs' Motion to Vacate Order of Dismissal filed
March 1, 1990	Defendants' Response to Plaintiffs' Motion to Vacate is filed
March 8, 1990	Order to Vacate Order of Dismissal is filed and Plaintiffs have 20 days to amend complaint
March 23, 1990	Amended Complaint is filed
April 16, 1990	Answer of City of Lakeworth is filed
April 17, 1990	Answer of City of Grapevine is filed; Motion to Dismiss or for Summary Judgment of Tarrant County is filed
June 7, 1990	Defendants' Motion for Protective Order is filed
June 18, 1990	Plaintiffs' Response to Defendants' Motion for Protective Order is filed
July 23, 1990	Plaintiffs' Reply to Defendants' Motion to Dismiss or for Summary Judgment is filed
July 25, 1990	Plaintiffs' Supplemental Response to Defendants' Motion to Dismiss or for Summary Judgment is filed

August 9, 1990 Cause is transferred to Judge
McBryde by Special Order No. 3-64

December 31, 1990 Order granting Defendants' Motion
for Protective Order filed

January 22, 1991 Memorandum Opinion and Order
dismissing all claims of Plaintiffs is
filed

January 22, 1991 Final Judgment in favor of Defen-
dants is entered

February 20, 1991 Notice of Appeal is given

February 22, 1992 Opinion of the Fifth Circuit Court
of Appeals is filed

March 24, 1992 Judgment as Mandate is issued to
the Clerk

CAUSE NO. 96-124444-89

CHARLENE LEATHERMAN * IN THE DISTRICT
AND KENNETH * COURT
LEATHERMAN as Individuals,*
and next friends of TRAVIS *
LEATHERMAN, *
Plaintiffs *
VS. * TARRANT COUNTY,
* TEXAS
THE TARRANT COUNTY *
NARCOTICS INTELLIGENCE *
AND COORDINATION UNIT *
and TARRANT COUNTY, *
TEXAS * 96 JUDICIAL
Defendants * DISTRICT

PLAINTIFF'S ORIGINAL PETITION
(Filed Nov. 22, 1989)

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW CHARLENE LEATHERMAN AND
KEN LEATHERMAN, as Individuals and as next friends
of TRAVIS LEATHERMAN, complaining of the TAR-
RANT COUNTY NARCOTICS INTELLIGENCE AND
COORDINATION UNIT and TARRANT COUNTY,
TEXAS, Defendants. For cause of action, Plaintiffs
respectfully show the Court as follows:

I.

Plaintiffs are individuals residing in Tarrant County,
Texas.

Defendant TARRANT COUNTY NARCOTICS
INTELLIGENCE AND COORDINATION UNIT is a law

enforcement agency believed to be administered and supervised by the Tarrant County District Attorney's Office. Defendant TARRANT COUNTY, TEXAS is a Texas County. Both Defendants may be served with process herein by serving ROY ENGLISH, the County Judge of Tarrant County, Texas at 100 East Weatherford, Fort Worth, Texas 76196 during normal business hours.

II.

This is a suit for damages brought under Article 42 of the United States Code, Section 1983; the Fourth, Fifth and Fourteenth Amendments to the United States Constitution; Article One, Sections Nine, Thirteen, Fifteen, Seventeen and Nineteen of the Texas Constitution; and the common law of the State of Texas.

Venue is proper in the District Courts of Tarrant County, Texas in that the incident made basis of this suit occurred in Tarrant County, Texas; all Defendants herein reside in Tarrant County, Texas; and all Plaintiffs reside in Tarrant County, Texas.

III.

On or about May 20, 1989, Plaintiff CHARLENE LEATHERMAN and her son, TRAVIS LEATHERMAN were stopped in the 8200 block of Cahoba Road in Fort Worth, Tarrant County, Texas by law enforcement officers in a marked police car. Immediately after Plaintiff CHARLENE LEATHERMAN brought her vehicle to a stop, she was surrounded by several men, later discovered to be plain clothes police officers, who were armed with hand

guns and other weapons. The plain clothes police officers shouted a variety of instructions to Plaintiff CHARLENE LEATHERMAN and her son, TRAVIS LEATHERMAN and threatened to shoot both CHARLENE LEATHERMAN and TRAVIS LEATHERMAN to death. The plain clothes police officers proceeded to identify Plaintiff CHARLENE LEATHERMAN and her son, TRAVIS LEATHERMAN, detained and arrested them, and ordered both CHARLENE LEATHERMAN and TRAVIS LEATHERMAN to accompany the officers to the Leatherman residence located at 8204 Cohoba Road, Fort Worth, Texas. Upon arrival at the residence in question, Plaintiff CHARLENE LEATHERMAN and TRAVIS LEATHERMAN were informed that the law enforcement officers involved in the incident had shot to death both dogs belonging to the Leathermans and were in the process of conducting a search of the Leatherman's residence. At that time, Plaintiff CHARLENE LEATHERMAN was provided with a copy of a search warrant and an affidavit for a search warrant purportedly authorizing the officers to search the Leatherman's residence for amphetamines, methamphetamines, or other controlled substances. Upon the conclusion of the search of the Leatherman residence, the law enforcement officers involved returned to their vehicles that were parked in the Leatherman's residence driveway, removed their bullet proof vests and began smoking, talking and drinking beer. The officer who was apparently in charge of the situation told Plaintiff CHARLENE LEATHERMAN that he was "sorry about the mistake" and shortly thereafter the law enforcement officers involved in the incident left the Leatherman residence.

IV.

Plaintiffs have reason to believe and do believe that at all times relevant hereto the law enforcement officers involved in the incident made basis of this suit were acting under the color of Texas State law and were acting in accordance with official policy usage and custom of the TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT of the Tarrant County District Attorney's Office and were therefore in the course and scope of their duties as agents, servants, and/or employees of TARRANT COUNTY, TEXAS.

V.

At the time of the incident made basis of this suit, Plaintiffs CHARLENE LEATHERMAN AND KENNETH LEATHERMAN had committed no offense or taken any action that would justify the outrageous detention and arrest of Plaintiff CHARLENE LEATHERMAN or the brutal, destructive, and unreasonable invasion and search of the residence occupied by Plaintiffs CHARLENE LEATHERMAN AND KENNETH LEATHERMAN.

VI.

The detention and arrest of Plaintiffs CHARLENE LEATHERMAN and her son, TRAVIS LEATHERMAN and the invasion and search of the residence occupied by Plaintiffs CHARLENE LEATHERMAN AND KENNETH LEATHERMAN were done without probable cause and in violation of the rights guaranteed to Plaintiffs and each of

them under the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution; Article One, Sections Nine, Thirteen, Fifteen, Seventeen, and Nineteen of the Texas Constitution; Article 42 of the United States Code, Section; and the common law of the State of Texas.

VII.

As a direct and proximate result of the actions of the law enforcement officers as described above, Plaintiffs and each of them have suffered property damage, embarrassment, humiliation, anxiety, and mental distress, and will in all likelihood, continue to so suffer far into the future, if not for the remainder of their lives. Plaintiffs suffering in the past and that suffering reasonably anticipated in the future has damaged and will damage Plaintiffs in an amount exceeding the minimum jurisdictional limits of this Court for which Plaintiffs now sue.

VIII.

The conduct of the law enforcement officers, acting in the course and scope of their employment, assignment, and/or agency with the TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT of the Tarrant County District Attorney's Office and of TARRANT COUNTY as described above was willful, intentional, malicious, and outrageous. The law enforcement officers involved in this incident acted with reckless and heedless disregard for the rights and to the sensitivities of Plaintiffs and each of them to such an extent that an award of exemplary damages in the amount of not less than FIVE HUNDRED THOUSAND DOLLARS

AND NO/100 (\$500,000.00) against Defendants and in favor of Plaintiffs is justified herein at law and in fact.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein and that on final trial the Court order that Plaintiffs have judgment over and against Defendants for their actual damages in an amount exceeding the jurisdictional limits of this Court; for exemplary damages in an amount of not less than \$500,000.00; for the costs of this suit; and for such other and further relief, both special and general, at law or in equity, to which Plaintiffs may show themselves to be entitled.

Respectfully Submitted,
 WILLIAM W. HARRIS
 State Bar No. 09097100
 1901 Central Drive, #208
 Bedford, Texas 76021
 (817) 283-4476
 ATTORNEY FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 FORT WORTH DIVISION

CHARLENE LEATHERMAN	§	CIVIL ACTION
AND KENNETH LEATHERMAN	§	NO.
as Individuals, and next friends	§	CA4-89-842-K
of TRAVIS LEATHERMAN,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	
	§	
THE TARRANT COUNTY	§	
NARCOTICS INTELLIGENCE	§	
AND COORDINATION UNIT and	§	
TARRANT COUNTY, TEXAS	§	
	§	
Defendants	§	

MOTION TO DISMISS
OR FOR SUMMARY JUDGMENT

(Filed Dec. 20, 1989)

TO THE HONORABLE DAVID O. BELEW, JR., JUDGE:

The Tarrant County Narcotics Intelligence and Coordination Unit and Tarrant County, Texas, Defendants in the above numbered and entitled cause, respectfully submit herewith pursuant to Rules 12(b)(6) and Rule 56, FED. R. CIV. PROC., their Motion to Dismiss or for Summary Judgment and show:

I.

The Complaint fails to state any claim upon which relief may be granted because:

1. The Tarrant County Narcotics Intelligence and Coordination Unit is not a legal entity capable of being sued and cannot be a "person" within the meaning of § 1983.

2. The Complaint fails to allege any policy, practice or usage of Tarrant County which "caused" the alleged deprivation of Plaintiff's rights.

3. The allegations of the Complaint are too broad and conclusory to state any claim under 42 U.S.C. § 1983.

II.

There is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law because:

1. The Complaint fails to state any claim upon which relief may be granted.

2. Tarrant County cannot be held liable under the doctrine of respondeat superior or any other theory of vicarious liability;

3. The summary judgment evidence shows that:

(a) The officers' search of Plaintiffs' premises was authorized by a valid search and arrest warrant.

(b) The destruction of the dogs was reasonable and necessary to protect the officers and effectuate the search of Plaintiffs' premises as ordered by the warrant.

(c) The search warrant authorized the N.I.C.U. officers to require Charlene Leatherman to return to the premises and to remain there while the search was being conducted.

4. There is no recognized state constitutional tort under Texas law.

5. Plaintiffs' have not alleged any action or omission which would fall within any exception to these Defendants' immunity from suit as provided in the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code.

6. Tarrant County is not liable under either § 1983 or state law for punitive damages.

III.

This Motion is supported by the pleading and the affidavits and attachments thereto submitted with this Motion.

WHEREFORE, premises considered, Defendants pray that the Court dismiss Plaintiffs' complaint for failure to state a claim upon which relief may be granted, or in the alternative, for summary judgment.

Respectfully submitted,

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

/s/ Van Thompson, Jr.
VAN THOMPSON, JR.
Assistant District Attorney
State Bar No. 19960000
200 West Belknap
Fort Worth, TX 76196-0201
(817) 334-1233

/s/ Barrie Howard
 BARRIE HOWARD
 Assistant District Attorney
 State Bar No. 10061720
 200 West Belknap
 Fort Worth, TX 76196-0201
 (817) 334-1233

ATTORNEYS FOR DEFENDANTS
 TARRANT COUNTY, TEXAS, AND
 TARRANT COUNTY NARCOTICS
 INTELLIGENCE AND
 COORDINATION UNIT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing was this day served upon the Plaintiffs by and through their attorney of record, WILLIAM W. HARRIS, 1901 Central Drive, #208, Bedford, Tarrant County, Texas 76021, in accordance with the provisions of Rule 5, FED. R. CIV. PROC.

Dated this 20th day of December, 1989.

/s/ Barrie Howard
 BARRIE HOWARD

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION

CHARLENE LEATHERMAN	§	CIVIL ACTION
AND KENNETH LEATHERMAN	§	NO.
as Individuals, and next friends	§	CA4-89-842-K
of TRAVIS LEATHERMAN,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	
	§	
THE TARRANT COUNTY	§	
NARCOTICS	§	
COORDINATION AND	§	
INTELLIGENCE UNIT and	§	
TARRANT COUNTY, TEXAS	§	
	§	
Defendants	§	

AFFIDAVIT OF TIM CURRY

THE STATE OF TEXAS §
 §
 COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared TIM CURRY, who by me having been duly sworn made the following affidavit:

My name is Tim Curry. I am above the age of 21 years, fully competent to make this affidavit, and have personal knowledge of the matters of material fact hereinafter set forth, which are true and correct.

At all times relevant and material to this cause I have been the Criminal District Attorney of Tarrant County, Texas.

The Tarrant County Narcotics Intelligence and Coordination Unit (N.I.C.U.) is a "Project" to provide a multi-jurisdictional drug task force with a centralized coordination unit. It was formed in 1988 and is funded primarily through grants received from the federal government through the Governor's Office of the State of Texas, Criminal Justice Division, to Tarrant County. I am Chairman of the Board of Directors and Project Director. The N.I.C.U. is not a separate governmental entity from Tarrant County.

Attached hereto as Attachment 1 is a true copy of the Form 424 for the current year concerning the application for the grant.

Attachment 1 is a business record kept in the regular course of business in the Office of the Criminal District Attorney. It was prepared at or near the time of the fact or event recorded by persons having actual knowledge, and it is the regular course of business to keep such records. I am the custodian of the records of the Office of the Criminal District Attorney of Tarrant County, Texas, and they are kept under my supervision and control.

It is not the policy of the N.I.C.U. to arrest without probable cause, to conduct warrantless searches and seizures without probable cause, or to violate the civil liberties of the citizens within its jurisdiction. It is the policy to obtain search warrants from a duly authorized magistrate prior to conducting a search of property.

Only reasonable force may be used where necessary by the N.I.C.U. officers in executing any search warrant so obtained.

Further, affiant sayeth not.

/s/ Tim Curry
TIM CURRY

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

SWORN to and subscribed before me by the said Tim Curry on this the 19th day of December, 1989.

[SEAL] ANGELA DAWN PHILLIPS
NOTARY PUBLIC
THE STATE OF TEXAS
COMMISSION EXPIRES
9-22-90

/s/ Angela Dawn Phillips
Notary Public in and for
the State of Texas

Angela Dawn Phillips
Notary's Printed Name

My commission expires:
9/22/90

EXHIBIT B
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN	§	CIVIL ACTION
AND KENNETH LEATHERMAN	§	NO.
as Individuals, and next friends	§	CA4-89-842-K
of TRAVIS LEATHERMAN,	§	
	§	
Plaintiffs	§	
	§	
VS.	§	
	§	
THE TARRANT COUNTY	§	
NARCOTICS INTELLIGENCE	§	
AND COORDINATION UNIT	§	
and TARRANT COUNTY, TEXAS	§	
	§	
Defendants	§	

AFFIDAVIT OF MIKE ADAIR

THE STATE OF TEXAS §
 §
 COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared MIKE ADAIR, who by me having been duly sworn made the following affidavit:

My name is Mike Adair. I am above the age of 21 years, fully competent to make this affidavit, and have personal knowledge of the matters of material fact hereinafter set forth, which are true and correct.

At all times relevant and material to this cause I have been the Assistant Director of the

Tarrant County Narcotics Intelligence and Coordination Unit (N.I.C.U.).

Attached hereto as Attachments 1 and 2 are true copies of the Search and Arrest Warrant and Affidavit, dated May 20, 1989, concerning the premises at 8204 Cohoba Street in the City of Fort Worth, Texas.

Attached hereto as Attachments 3 and 4 are true copies of Offense Report 89TF70 and Supplemental Report 89TF70 concerning the execution of the Search and Arrest Warrant, dated May 20, 1989, of the premises at 8204 Cohoba Street in the City of Fort Worth, Texas.

Also attached hereto as Attachment 5 is a true copy of Tactical Operations Report No. 98-T-005, dated May 20, 1989, of the Lake Worth Police Department. This report was made by a law enforcement officer in the regular course of his duties to report matters which he is required by law to observe and report.

Attachments 1 through 5 are records kept or received in the regular course of business by N.I.C.U. It is the regular course of business to keep and receive such records. They are kept and received by persons having actual knowledge thereof at or near the time of the fact or event recorded.

At the time of the execution of the warrant described above the officers advise that they encountered two large dogs, a doberman and a German shepherd, on the premises. There was no one present to control them. These dogs were threatening to attack the officers and it was necessary for the officers to destroy them for the protection of the officers.

Except for the shooting of the dogs, no guns were drawn and no threats were made against Charlene Leatherman or her son. It was not necessary to break in the door in order to gain entry to the residence on the property, and no property damage was done to the property or possessions of the occupants by the officers, except for the shooting of the dogs.

Further, affiant sayeth not.

/s/ Mike Adair
MIKE ADAIR

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

SWORN to and subscribed before me by the said Mike Adair on this the 19th day of December, 1989.

[SEAL] ANGELA DAWN PHILLIPS
NOTARY PUBLIC
THE STATE OF TEXAS
COMMISSION EXPIRES
9-22-90

/s/ Angela Dawn Phillips
Notary Public in and for
the State of Texas

Angela Dawn Phillips
Notary's Printed Name

My commission expires:
9/22/90

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN	§	
AND KENNETH	§	CIVIL ACTION
LEATHERMAN as next friends	§	NO. 4-89-842-K
of TRAVIS LEATHERMAN	§	
VS.	§	
	§	
THE TARRANT COUNTY	§	
NARCOTICS COORDINATION	§	
AND INTELLIGENCE UNIT	§	
and TARRANT COUNTY, TEXAS	§	

ORDER

(Filed Feb. 1, 1990)

Pending before the Court is the Defendants' Motion to Dismiss pursuant to federal rule of civil procedure 12(b)(6), to which the Plaintiffs have failed to respond. After careful review of the pleadings, the brief and the applicable law, it is the opinion of this Court that the Plaintiffs' Complaint fails to allege any custom practice or usage from which a policy may be inferred, which would violate any constitutional right of the Plaintiffs in this cause. Consequently the Court is of the opinion that the Defendants' Motion is well taken and should be granted.

Therefore, the Defendants' Motion to Dismiss is hereby GRANTED and the above styled and numbered cause of action is hereby DISMISSED.

IT IS SO ORDERED.

SIGNED this 1 day of February, 1990.

/s/ David O. Belew, Jr.
 DAVID O. BELEW, JR.
 UNITED STATES DISTRICT
 JUDGE

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 FORT WORTH DIVISION

CHARLENE LEATHERMAN)	
AND KENNETH)	CIVIL ACTION
LEATHERMAN as next friends)	NO. 4-89-842K
of TRAVIS LEATHERMAN)	
VS.)	
)	
THE TARRANT COUNTY)	
NARCOTICS INTELLIGENCE)	
AND COORDINATION UNIT)	
and TARRANT COUNTY, TEXAS)	

PLAINTIFFS' MOTION TO VACATE ORDER OF DIS-
 MISSAL AND FOR DEFERRAL OF CONSIDERATION
 AND DECISION ON DEFENDANTS' MOTION TO DIS-
 MISS OR FOR SUMMARY JUDGMENT AND BRIEF IN
 SUPPORT THEREOF

NOW COME Plaintiffs Charlene Leatherman and
 Kenneth Leatherman, as individuals, and as next friends
 of Travis Leatherman, and files this their Motion to
 Vacate Order of Dismissal and for Deferral of Consider-
 ation and Decision on Defendants' Motion to Dismiss or
 for Summary Judgment, and in support thereof would
 respectfully show the Court the following:

1.

On or about November 22, 1989 the Plaintiff, through
 their counsel William W. Harris, filed their Original Peti-
 tion against the Defendants in the 96th Judicial District
 Court of Tarrant County, Texas, stating cause of actions
 inter alia, that their rights to be free from unreasonable

search and seizure protected by the Fourth Amendment to the United States Constitution were violated as a result of the Defendants' execution of a search warrant wherein Plaintiffs' home was ransacked and their two family dogs deliberately shot to death by Defendants' agents without provocation or reasonable justification.

2.

On or about December 12, 1989 Defendants Tarrant County Narcotics Intelligence and Coordination Unit ("T.C.N.I.C.U.") and Tarrant County, Texas ("Tarrant County"), removed Plaintiffs' cause of action to this Honorable Court. Plaintiffs' attorney in the state court proceedings, William W. Harris, having not received admission to practice in federal court, immediately began making inquiries with other counsel in the Fort Worth area in an effort to obtain co-counsel to assist in prosecuting Plaintiffs' case.

Contact was made with the undersigned and he agreed to assume co-counsel status of Plaintiffs' case, conditioned upon Mr. Harris receiving express consent from the Plaintiffs. Although Mr. Harris anticipated being able to promptly confer with his clients to receive the agreed upon consent, because Plaintiffs do not maintain residential phone service, it was several days before express consent was received from Plaintiffs (via the United States Postal Service) to employ Mr. Gladden as counsel. That consent was given on February 6, 1990, the date of the order of dismissal.

3.

After conducting an initial investigation into the applicable law and the facts and circumstances alleged by Plaintiffs and other facts made known to the undersigned, he has concluded that the facts and law support a valid claim against Defendants' employees and most likely against Defendant Governmental entities, see e.g., *Erwin v. County of Manitowoc*, 872 F.2d 1292, 1297-1298 (7th Cir. 1989), (holding unjustified shooting of family dog states claim against individual officer and governmental entity).

4.

The dismissal of Plaintiffs' case based on Rule 12(b)(6) of the Federal Rules of Civil Procedure is appropriate only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Partridge v. Two Unknown Police Officers*, 791 F.2d 1182, 1186 (5th Cir. 1986). In Plaintiffs' Original Petition filed in state court, the Plaintiffs alleged that liability against Defendants T.C.N.I.C.U. and Tarrant County, Texas, would be established by proof that the officers who violated Plaintiffs' constitutional rights "were acting in accordance with official policy, usage and custom" of these Defendants (Plaintiffs' Original Petition, paragraph IV). While the foregoing statement arguably does not sufficiently articulate the "failure to train" theory of policy under 42 U.S.C Section 1983, as that theory was applied to facts almost identical to those of the instant case in *Erwin v. County of Manitowoc*, supra, 872 F.2d at 1297, the undersigned counsel submits that

"the policy of the federal rules favoring adjudication on the merits," *Partidge*, supra, 791 F.2d at 1189 n.3, warrants the granting of Plaintiffs' request that the Court's Order of Dismissal be vacated, and a final decision on Defendants' Motion for Dismissal and for Summary Judgment be deferred for 20 days, so that the undersigned counsel may adequately respond to the arguments raised by Defendants and that Plaintiffs may amend their pleadings to conform with the technical pleading requirements under 42 U.S.C. Section 1983.

Respectfully submitted,

LAW OFFICES OF DON GLADDEN
P. O. Box 50686
Fort Worth, Texas 76105
817-531-3667

By: /s/ Don Gladden
DON GLADDEN

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument has been served on the attorneys for all parties on this the 8th day of February, 1990, in accordance with the Federal Rules of Civil Procedure.

/s/ Don Gladden
DON GLADDEN

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with the attorney for Defendants, Assistant District Attorney Van Thompson on the 8th day of February, 1990, who advises that he opposes this motion.

/s/ Don Gladden
DON GLADDEN

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN	§	
AND KENNETH	§	
LEATHERMAN as Individuals	§	CIVIL ACTION
and next friends	§	NO. 4-89-842-K
of TRAVIS LEATHERMAN	§	
VS.	§	
THE TARRANT COUNTY	§	
NARCOTICS INTELLIGENCE	§	
AND COORDINATION UNIT	§	
and TARRANT COUNTY, TEXAS	§	

ORDER

(Filed Mar. 8, 1990)

Pending before the Court is the Plaintiffs' Motion to Vacate the Order of Dismissal entered by this Court on 1 February, 1990. After careful review of the respective briefs and the applicable law, it is the opinion of this Court that the Plaintiffs' Motion is well taken and should be granted.

Therefore, the Order of Dismissal entered in the above styled and numbered cause on 1 February 1990 is hereby VACATED.

Further, the Plaintiffs are hereby ORDERED to amend their Complaint within 20 days from the signing of this Order.

IT IS SO ORDERED.

SIGNED this 8 day of March, 1990.

/s/ David O. Belew, Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT
JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN and)
KENNETH LEATHERMAN,)
Individually and as Next Friends)
of TRAVIS LEATHERMAN;)
GERALD ANDERT; KEVIN)
LEALOS and JERRI LEALOS,)
Individually and as Next Friends)
of SHANE LEALOS and)
TRAVOR LEALOS; PAT LEALOS;)
DONALD ANDERT; and LUCY)
ANDERT,)

Plaintiffs)

VS.)

No. CA-4-89-842-K

THE TARRANT COUNTY)
NARCOTICS INTELLIGENCE)
AND COORDINATION UNIT;)
TIM CURRY, in his Official)
Capacity as Director of the)
Tarrant County Narcotics)
Intelligence and)
Coordination Unit; TARRANT)
COUNTY, TEXAS; DON)
CARPENTER, in his Official)
Capacity as Sheriff of Tarrant)
County, Texas; CITY OF LAKE)
WORTH, TEXAS; and CITY OF)
GRAPEVINE, TEXAS,)

Defendants)

PLAINTIFF'S FIRST AMENDED COMPLAINT
(Filed Mar. 23, 1990)

In accordance with the Order of the Court of March 8, 1990, requiring Plaintiffs to amend, Plaintiffs herewith file their First Amended Complaint.

Plaintiffs bring this action pursuant to 42 U.S.C. Section 1983 and 1988, alleging the violation of their rights guaranteed under the Fourth and Fourteenth Amendments to the United States Constitution. In addition to damages sought for the deprivation of their federally protected Constitutional rights, Plaintiffs also seek declaratory relief pursuant to 28 U.S.C. Section 2201 and 2202.

1.

Jurisdiction is conferred upon this Court by 28 U.S.C. Section 1343.

PARTIES

2.

Plaintiffs Kenneth Leatherman and Charlene Leatherman, individually and in their capacities as Next of Friends to Travis Leatherman, a minor, are and were at the time of the acts complained of herein, citizens of the United States and residents of the city of Fort Worth, Texas.

3.

Plaintiff Gerald Andert is and was at the time of the acts complained of herein, a citizen of the United States and a resident of the city of Southlake, Texas.

4.

Plaintiffs Kevin and Jerri Lealos, individually and in their capacities as Next of Friends to Shane and Travor Lealos, minors are and were at the time of the acts complained of herein, citizens of the United States and residents of the city of Southlake, Texas.

5.

Plaintiff Pat Lealos is and was at the time of the acts complained of herein, a citizen of the United States and a resident of El Paso, Texas.

6.

Plaintiff Donald Andert is and was at the time of the acts complained of herein, a citizen of the United States and a resident of Shakopee, Minnesota.

7.

Plaintiff Lucy Andert is and was at the time of the acts complained of herein, a citizen of the United States and a resident of Hancock, Minnesota.

8.

Defendant Tim Curry is and was at the time of the acts complained of herein the Director of Defendant Tarrant County Narcotics Intelligence and Coordination Unit ("TCNICU"). As Director of TCNICU, Defendant Curry was vested with official authority and responsibility for establishing policies for and supervising the day-to-day operations and practices of law enforcement personnel participating in and comprising the Defendant Tarrant County Narcotics Intelligence and Coordination Unit.

Defendant Tim Curry may be served with process at his place of employment at the Tarrant County District Attorney's Office located at 200 West Belknap Street, Fort Worth, Texas.

9.

Defendant Don Carpenter was, at the time this action arose, the duly elected, qualified and acting Sheriff for Defendant Tarrant County, Texas ("Tarrant County"). As Sheriff for Defendant Tarrant County, Defendant Carpenter was vested with official authority and responsibility for establishing policies for and supervising the day-to-day operations and practices of law enforcement personnel employed by Defendant Tarrant County.

Defendant Don Carpenter may be served with process at his place of employment at the Tarrant County Sheriff's Office located at 300 West Belknap Street, Fort Worth, Texas.

10.

Defendant City of Lake Worth is a municipal corporation incorporated under the laws of the State of Texas and situated in Tarrant County, Texas, and may be served with process by serving the City Secretary of said City at 6720 Telephone Road, Lake Worth, Texas 76135.

11.

Defendant City of Grapevine is a municipal corporation incorporated under the laws of the State of Texas and is situated in Tarrant County, Texas, and may be served with process by serving the City Secretary of said City at 413 Main Street, Grapevine, Texas.

FACTS

12.

At approximately 8 o'clock p.m. on January 30, 1989, Gerald Andert and his family were gathered at Gerald's home located in the 2000 block of Kimball Road in the City of Southlake, Texas, mourning the tragic death of Marie Andert, Gerald's wife and the matriarch of the Andert family, who had died two days earlier after a three year battle with cancer. Present at the residence were Kevin and Jerri Lealos (Gerald's son-in-law and daughter, respectively, who also lived at the resident, hereinafter referred to as the "Lealos" residence); Shane and Tavor Lealos (respectively the daughter and son of Kevin and Jerri Lealos); Pat Lealos (Kevin's sister who had flown in from El Paso, Texas, for the funeral); Donald

Andert (Gerald Andert's son); and Lucy Andert (Gerald's 76 year old sister-in-law).

13.

Moments after 8 o'clock on the evening in question, and completely without prior warning, numerous law enforcement officers of the Defendant City of Grapevine and Defendant TCNICU broke into the Lealos home. Upon hearing the French doors of the house breaking open, Gerald Andert, who at the time was seated in the kitchen area of his home looking at photographs of his late wife, turned to determine what was going on. As Gerald turned around, an unidentified officer knocked him backwards, breaking the back of the wooden chair in which he was sitting. Upon turning back toward the officer and raising his arms to deflect another blow, Gerald was without provocation clubbed twice on the head by the officer, causing a severe cut to Gerald's forehead which would later require 11 stitches to close.

14.

During the extended period of time during which Gerald Andert and members of the Lealos family were required to lie face down on the floor, held at gunpoint, fearing for their lives and still unaware of the identify of these armed intruders, several requests for identification were made of the law enforcement officers present. The officers responded to these requests for identification by shouting obscenities and threats at the persons requesting such information.

15.

Upon the conclusion of their search of the Lealos residence some 1 1/2 hours later, and having discovered no items which could form the basis of a criminal prosecution, the officers left the premises without so much as an apology for their wrongful search of the Lealos residence, or the grossly abusive manner in which the search was carried out.

16.

On or about May 20, 1989, Plaintiff Charlene Leatherman and her son, Travis Leatherman were stopped in the 8200 block of Cahoba Road in Fort Worth, Tarrant County, Texas, by law enforcement officers in a marked police car. Immediately after Charlene brought her vehicle to a stop, she was surrounded by several men, later discovered to be plain clothes police officers, who were armed with hand guns and other weapons. The plain clothes police officers shouted a variety of instructions to Charlene and Travis and threatened to shoot each of them. The plain clothes police officers proceeded to identify Charlene and Travis, and moments later informed them that law enforcement officers executing a warrant had shot to death two dogs belonging to the Leathermans and were in the process of conducting a search of the Leatherman's residence. When Charlene inquired of the officer apparently in charge of the search as to why the family dogs had been shot, the officer replied that this was "standard procedure."

17.

The search of the Leathermans' home was planned and carried out by law enforcement officers employed by or under the control of Defendant TCNICU, Defendant Tarrant County and Defendant City of Lake Worth.

18.

Upon the conclusion of the search of the Leatherman residence, and having discovered no items described in the warrant which could otherwise have provided a basis for a criminal prosecution, the officers verbally acknowledged to Charlene and Travis their "mistake" in having searched the Leatherman residence. Instead of leaving at this time however, the officers removed lawn chairs from a truck in which they had arrived and proceeded to lounge about the driveway and yard of the Leatherman residence for approximately 1 1/2 hours, drinking beer, smoking, talking, laughing, and essentially having a party to celebrate their seemingly unbridled governmental power.

19.

On returning to their residence, Charlene and Travis Leatherman discovered "Shakespeare," the smaller of the two family dogs owned by the Leathermans, lying shot to death approximately 25 feet from the main doorway entrance to their home. Shakespeare appeared to have been shot three times: once in the stomach, once in the leg, and once in the head. Upon entering the doorway of the residence, it appeared that "Ninja," the larger of the

two dogs owned by the Leathermans, had defecated just inside the door of the residence. Ninja was subsequently discovered on top of a bed located in a rear bedroom of the house. Ninja had been shot in the head at close range, apparently with a shotgun, which resulted in brain matter being splattered across the bed, against the wall, and on the floor around the bed.

20.

As a result of the extreme emotional shock and distress experienced by Charlene, Travis and Kenneth Leatherman resulting from the unreasonable search of their home and the malicious shooting of their family pets, the Leatherman family found it necessary to locate and temporarily secure other lodging.

COUNT I

21.

Plaintiffs Charlene and Kenneth Leatherman (hereinafter sometimes referred to as "the Leathermans") allege that the shooting of their family dogs on the occasion in question by agents of Defendant TCNICU, Defendant Tarrant County and Defendant City of Lake Worth, deprived them of their right to be secure in their effects against unreasonable seizure as protected by the Fourth Amendment to the United States Constitution. Plaintiffs would show in this connection that at the time of the shootings of their dogs there existed no reasonable justification for the shooting of their dogs, and that the officers involved in the search of the Plaintiffs' residence at

no time sought assistance from Charlene or Travis Leatherman to remedy any inconvenience to the officers which could have been caused by the presence of the dogs on the premises during the search.

22.

The Leathermans allege that the manner in which the search of their home was carried out by agents of Defendant TCNICU, Defendant Tarrant County and Defendant City of Lake Worth, deprived them of their right to be secure in their house against unreasonable searches as protected by the Fourth Amendment to the United States Constitution. Plaintiffs would show in this connection that the actions of the officers when searching their home, including but not limited to the shooting of the Leatherman family dogs, were objectively unreasonable under the facts and circumstances as they existed at the time such actions were taken.

23.

The Leathermans allege that Defendant TCNICU is liable to them pursuant to 42 U.S.C. Section 1983 for the unreasonable seizure of Plaintiffs' effects, i.e., the unjustified shooting of Plaintiffs' dogs, as alleged in paragraph 21 of this First Amended Complaint. Specifically, Plaintiffs allege that the actions of the agents of Defendant TCNICU were undertaken under color of law; that Defendant TCNICU failed to formulate and implement an adequate policy to train its officers on the proper manner in which to respond when confronted by family dogs when executing search warrants; and that in light of the

duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant TCNICU, by and through its official policymaker Tim Curry, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to train referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 21.

24.

The Leathermans allege that Defendant Tarrant County is liable to Plaintiffs pursuant to 42 U.S.C. Section 1983 for the unreasonable seizure of Plaintiffs' effects, i.e., the unjustified shooting of Plaintiffs' dogs, as alleged in paragraph 21 of this First Amended Complaint. Specifically, Plaintiffs allege that the actions of the agents of Defendant Tarrant County were undertaken under color of law; that Defendant Tarrant County failed to formulate and implement an adequate policy to train its officers on the proper manner in which to respond when confronted by family dogs when executing search warrants; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant Tarrant County, by and through its official policymaker Don Carpenter, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to train referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 21.

25.

The Leathermans allege that Defendant City of Lake Worth is liable to them pursuant to 42 U.S.C. Section 1983 for the unreasonable seizure of Plaintiffs' effects, i.e., the unjustified shooting of Plaintiffs' dogs, as alleged in paragraph 21 of this First Amended Complaint. Specifically, Plaintiffs allege that the actions of the agents of Defendant City of Lake Worth were undertaken under color of law; that Defendant City of Lake Worth failed to formulate and implement an adequate policy to train its officers on the proper manner in which to respond when confronted by family dogs when executing search warrants; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant City of Lake Worth by and through its official policymaker or policymakers, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to train referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 21.

26.

The Leathermans allege that Defendant TCNICU is liable to Plaintiffs pursuant to 42 U.S.C. Section 1983 for the unreasonable search of Plaintiffs' house as alleged in paragraph 22 of this First Amended Complaint. Specifically, Plaintiffs allege that the actions of the agents of Defendant TCNICU were undertaken under color of state law; that Defendant TCNICU failed to formulate and

implement an adequate policy to train its officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant TCNICU, by and through its official policymaker Tim Curry, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to train referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 22.

27.

The Leathermans allege that Defendant Tarrant County is liable to Plaintiffs pursuant to 42 U.S.C. Section 1983 for the unreasonable search of Plaintiffs' house as alleged in paragraph 22 of this First Amended Complaint. Specifically, Plaintiffs allege that the actions of the agents of Defendant Tarrant County were undertaken under color of state law; that Defendant Tarrant County failed to formulate and implement an adequate policy to train its officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant Tarrant County, by and through its official policymaker Don Carpenter, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to train referred to in

this paragraph was a substantial factor or cause of the violation alleged in paragraph 22.

28.

The Leathermans allege that Defendant City of Lake Worth is liable to Plaintiffs pursuant to 42 U.S.C. Section 1983 for the unreasonable search of Plaintiffs' house as alleged in paragraph 22 of this First Amended Complaint. Specifically, Plaintiffs allege that the actions of the agents of Defendant City of Lake Worth were undertaken under color of state law; that Defendant City of Lake Worth failed to formulate and implement an adequate policy to train its officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant City of Lake Worth, by and through its official policymaker or policymakers, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to train referred to in this paragraph was a substantial factor or cause of violation alleged in paragraph 22.

COUNT II

29.

Plaintiff Gerald Andert alleges that his being struck on the head with a club without provocation, as alleged in paragraph 13 of this First Amended Complaint,

deprived him of his right to be secure in his person against unreasonable seizure as protected by the Fourth Amendment to the United States Constitution. In this connection Plaintiff Gerald Andert would show that the actions taken by the seizing officer, including but not limited to the act of striking Plaintiff with a club, was objectively unreasonable under the facts and circumstances as they existed at the time such actions were taken.

30.

Plaintiffs Gerald Andert, and Kevin and Jerri Lealos, individually and in their capacities as next of friends to Shane and Tavor Lealos, each being residents of the Lealos house, allege that the manner in which the search of their home was carried out by agents of Defendant TCNICU and Defendant City of Grapevine deprived them of their right to be secure in their house against unreasonable searches and seizures as protected by the Fourth Amendment to the United States Constitution. Plaintiffs would show that the acts of the agents of Defendant TCNICU and Defendant City of Grapevine, including but not limited to the unannounced forcible entry into the Lealos home, the unprovoked clubbing of Gerald Andert (a 64 year old grandfather), and the flow of obscenities and threats shouted at family members present, were objectively unreasonable under the facts and circumstances as they existed at the time such actions were taken.

31.

Plaintiff Gerald Andert alleges that Defendant TCNICU is liable to him pursuant to 42 U.S.C. Section 1983 for the unreasonable seizure of his person as alleged in paragraph 29 of this First Amended Complaint. Specifically, Plaintiff alleges the unidentified officer who struck him with a club without provocation was acting as an agent of Defendant TCNICU; that the unidentified officer on the occasion in question was acting under color of law; that Defendant TCNICU failed to formulate and implement an adequate policy to train its officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant TCNICU, by and through its official policymaker Tim Curry, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiff Gerald Andert further alleges that the failure to train referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 29.

32.

Plaintiff Gerald Andert alleges that Defendant City of Grapevine is liable to him pursuant to 42 U.S.C. Section 1983 for the unreasonable seizure of his person as alleged in paragraph 29 of this First Amended Complaint. Specifically, Plaintiff alleges the unidentified officer who struck him with a club without provocation was acting as

an agent of Defendant City of Grapevine; that the unidentified officer on the occasion in question was acting under color of law; that Defendant City of Grapevine failed to formulate and implement an adequate policy to train its officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant City of Grapevine, by and through its official policymaker or policymakers, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiff Gerald Andert further alleges that the failure to train referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 29. —

33.

Plaintiffs Gerald Andert, Kevin Lealos, Jerri Lealos, Shane Lealos and Trevor Lealos allege that Defendant TCNICU is liable to them for the unconstitutional manner in which the search of their home was carried out as alleged in paragraph 30 of this First Amended Complaint. Specifically, these Plaintiffs allege that agents of Defendant TCNICU participated in the unconstitutional search alleged; that said agents of Defendant TCNICU on the occasion in question were acting under color of law; that Defendant TCNICU failed to formulate and implement an adequate policy to train its officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in light of the duties

commonly assigned to officers who execute search warrants, the need for additional or different training was so that the conduct of Defendant TCNICU, by and through its official policymaker Tim Curry, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to train referred to in this paragraph was a substantial factor or cause of violation alleged in paragraph 30.

34.

Plaintiffs Gerald Andert, Kevin Lealos, Jerri Lealos, Shane Lealos and Trevor Lealos allege that Defendant City of Grapevine is liable to them for the unconstitutional manner in which the search of their home was carried out as alleged in paragraph 30 of this First Amended Complaint. Specifically, these Plaintiffs allege that agents of Defendant City of Grapevine participated in the unconstitutional search alleged; that said agents of Defendant City of Grapevine on the occasion in question were acting under color of law; that Defendant City of Grapevine failed to formulate and implement an adequate policy to train its officers on the Constitutional limitations restricting the manner in which search warrants may be executed; and that in light of the duties commonly assigned to officers who execute search warrants, the need for additional or different training was so obvious that the conduct of Defendant City of Grapevine, by and through its official policymaker or policymakers, demonstrates a deliberate indifference to the Constitutional rights of persons likely to be affected by such failure to train. Plaintiffs further allege that the failure to

train referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 30.

COUNT III

35.

All Plaintiffs named in this First Amended Complaint allege that the search warrants which authorized the searches of the Leatherman and Lealos residences were invalid when issued as each were unsupported by a showing of probable cause necessary for the issuance of a valid warrant under the Fourth Amendment to the United States Constitution. Specifically, Plaintiffs allege that the affidavits relied upon by the issuing magistrates, and which separately provided the factual basis for the issuance of the Leatherman and the Lealos warrants, disclose no more than that "odors associated" with clandestine drug manufacturing laboratories had allegedly been detected by law enforcement officers. Plaintiffs allege that an "odor associated" with clandestine drug manufacturing, without more, is insufficient as a matter of law to establish probable cause for the issuance of a search warrant.

36.

The Leathermans allege that Defendant TCNICU is liable to them pursuant to 42 U.S.C. Section 1983 for all damages resulting from the unreasonable search of their home executed under authority of the warrant alleged to be invalid in paragraph 35 of this First Amended Complaint. The Leathermans allege that it is and was on the

occasion in question, the custom and practice of Defendant TCNICU and its law enforcement personnel to prepare affidavits and cause the issuance and execution of search warrants predicated on no more than the detection of "odors associated" with illegal drug manufacturing. The Leathermans allege that the aforementioned custom and practice is so persistent and widespread that the official policymaker of Defendant TCNICU, Tim Curry, either knew or should have known of the alleged custom and practice. The Plaintiffs further allege that the custom and practice referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 35.

37.

Plaintiffs Gerald Andert, Kevin and Jerri Lealos, individually and in their capacities as next of friends of Shane and Trevor Lealos, each being residents of the Lealos house, allege that Defendant TCNICU is liable to them pursuant to 42 U.S.C. Section 1983 for all damages resulting from the unreasonable search of their home executed under authority of the warrant alleged to be invalid in paragraph 35 of this First Amended Complaint. The Plaintiffs named in this paragraph allege that it is and was on the occasion in question, the custom and practice of Defendant TCNICU and its law enforcement personnel to prepare affidavits and cause the issuance and execution of search warrants predicated on no more than the detection of "odors associated" with illegal drug manufacturing. These Plaintiffs allege that the aforementioned custom and practice was so persistent and widespread that the official policymaker of Defendant TCNICU, Tim

Curry, either knew or should have known of the alleged custom and practice. The Plaintiffs further allege that the custom and practice referred to in this paragraph was a substantial factor or cause of the violation alleged in paragraph 35.

38.

Plaintiffs Gerald Andert, Kevin and Jerri Lealos, individually and in their capacities as next of friends of Shane and Trevor Lealos; Pat Lealos; Donald Andert; and Lucy Andert; each allege that the seizure of their persons under authority of the warrant alleged to be invalid in paragraph 35 of this First Amended Complaint, deprived them of their rights to be secure in their persons against unreasonable seizure as protected by the Fourth Amendment to the United States Constitution. These Plaintiffs allege that Defendant TCNICU is liable to them pursuant to 42 U.S.C. Section 1983 for all damages resulting from the aforementioned unconstitutional seizures of their persons; that it is and was on the occasion in question, the custom and practice of Defendant TCNICU and its law enforcement personnel to prepare affidavits and cause the issuance and execution of search warrants predicated on no more than the detection of "odors associated" with illegal drug manufacturing; that the custom and practice described above was so persistent and widespread that the official policymaker of Defendant TCNICU, Tim Curry, either knew or should have known of the alleged custom and practice; and, that the custom and practice referred to in this paragraph was a substantial factor or cause of the unconstitutional seizures of their persons.

COUNT IV

Relief Sought

39.

As a result of the violations of the Plaintiffs' rights alleged in this First Amended Complaint, all Plaintiffs named herein have wrongfully suffered anger, anguish, sleeplessness, humiliation and embarrassment, all of which has caused each Plaintiff to be damaged in an amount to be determined by a jury.

40.

All Plaintiffs named herein would further show the Court that as a result of the violations described in this First Amended Complaint, they have been required to employ the undersigned attorneys to represent them in obtaining the redress sought, and therefore Plaintiffs request that upon final judgment, or earlier as may be appropriate, the Court award them their reasonable attorney's fees pursuant to 42 U.S.C. Section 1988.

41.

All Plaintiffs named herein request a jury trial of this cause.

WHEREFORE, Plaintiffs pray that the Defendants be served with process and required to answer herein and that upon final hearing this Court:

a) Vindicate the Leathermans' right to be secure in their effects against unreasonable seizure, as protected by the Fourth and Fourteenth Amendments to the United

States Constitution, and enter judgment declaring the unjustified shooting of Plaintiffs' pets by agents of the Defendants TCNICU, Tarrant County and City of Lake Worth in violation of that right;

b) Vindicate the Leathermans' right to be secure in their house against unreasonable search, as protected by the Fourth and Fourteenth Amendment to the United States Constitution, and enter judgment declaring the manner in which the search of the Leathermans' home was carried out by agents of the Defendants TCNICU, Tarrant County and City of Lake Worth, in violation of that right;

c) Vindicate the Leathermans' right to be secure in their house against unreasonable search, as protected by the Fourth and Fourteenth Amendments to the United States Constitution, and enter judgment declaring the warrant which authorized the search of the Leatherman home invalid due to its issuance without a showing of probable cause, and the issuance and execution of said warrant by agents of Defendants TCNICU, Tarrant County and City of Lake Worth, in violation of that right;

d) Vindicate Plaintiff Gerald Andert's right to be secure in his person against unreasonable seizure, as protected by the Fourth and Fourteenth Amendments to the United States Constitution, and enter judgment declaring the manner in which the seizure of Gerald Andert was carried out by agents of Defendants TCNICU and City of Grapevine in violation of that right;

e) Vindicate the rights of Plaintiffs Gerald Andert, Kevin Lealos, Jerri Lealos, Shane Lealos and Trevor Lealos to be secure in their house against unreasonable

search, as protected by the Fourth and Fourteenth Amendments to the United States Constitution, and enter judgment declaring the manner in which the search of their home was carried out by agents of Defendants TCNICU and City of Grapevine in violation of that right;

f) Vindicate the rights of Plaintiffs Gerald Andert, Kevin Lealos, Jerri Lealos, Shane Lealos and Trevor Lealos to be secure in their house against unreasonable search, as protected by the Fourth and Fourteenth Amendment to the United States Constitution, and enter judgment declaring the warrant which authorized the search of these Plaintiffs' home invalid due to its issuance without a showing of probable cause, and the issuance and execution of said warrant by agents of Defendants TCNICU and City of Grapevine in violation of that right;

g) Vindicate the rights of Plaintiffs Gerald Andert, Kevin Lealos, Jerri Lealos, Shane Lealos, Trevor Lealos, Pat Lealos, Donald Andert and Lucy Andert, to be secure in their persons against unreasonable seizure as protected by the Fourth and Fourteenth Amendments to the United States Constitution, and enter judgment declaring the seizure of these Plaintiffs pursuant to the execution of the invalid search warrant for the Andert home, in violation of that right;

h) Award each of the Plaintiffs named herein their actual damages against Defendants as may be shown;

i) Award each of the Plaintiffs named herein their reasonable attorney's fees for prosecution of this suit as authorized by 42 U.S.C. Section 1988;

/s/ Don Gladden
DON GLADDEN

Narcotics Intelligence and Coordination Unit; TARRANT COUNTY, TEXAS; and DON CARPENTER, in his Official Capacity as Sheriff of Tarrant County, Texas; Defendants, in the above numbered and entitled cause respectfully submit herewith their Motion to Dismiss or for Summary Judgment, pursuant to Rules 12(b)(6) and 56, FED. R. CIV. PROC., and show:

I.

The Amended Complaint fails to state any claim upon which relief may be granted because:

(a) The alleged policy of Defendants to seek and obtain search warrants based on the detection by experienced and competent law enforcement officers of the distinctive odors associated with the manufacture of illicit drugs by clandestine drug laboratories is not unconstitutional.

(b) Only broad conclusions are alleged and no material allegations of specific facts sufficient to show a policy of "deliberate indifference" to the constitutional rights of the public by failure to properly train the law enforcement officers under the control of Defendants are alleged:

(i) Identifying the specific deficiency in training alleged to have caused the injury of which Plaintiffs complain;

(ii) Showing a "close causal nexus" between the alleged failure to train and the injury alleged;

(iii) Indicating a pattern or series of incidents of widespread constitutional violations to which Defendants

are alleged to have been deliberately indifferent by failure to provide proper training; or

(iv) Identifying any specific constitutional limitation in the execution of search warrants as to which Defendants have been deliberately indifferent through failure to train their officers.

(c) The Tarrant County Narcotics and Intelligence Unit is not a "person" susceptible to suit under 42 U.S.C. § 1983.

(d) Claims for "emotional distress" do not rise to the level of constitutional issues actionable under 42 U.S.C. § 1983.

(e) Threats and verbal abuse do not rise to the level of a constitutional issues actionable under 42 U.S.C. § 1983.

(f) No "severe injury" is alleged which is necessary in order to state a claim under 42 U.S.C. § 1983.

(g) The detention of Plaintiffs by the law enforcement officers while conducting the search authorized by the warrants is not unconstitutional.

(h) The manner of the service of the warrants is discretionary with the law enforcement officers and "unauthorized entry" of Plaintiffs' premises for the service thereof does not violate the 4th Amendment.

(i) There is no allegation in the Complaint that there is no adequate state postdeprivation remedy readily available to Plaintiffs' for the destruction of the dogs.

II.

There are no genuine issues of material fact for trial of this cause and Defendants are entitled to judgment as a matter of law because:

(a) Defendants cannot be held liable under the doctrine of respondeat superior or any theory of vicarious liability.

(b) The Tarrant County Narcotics and Intelligence Unit is not a "person" susceptible to suit under 42 U.S.C. § 1983.

(c) The summary judgment evidence shows:

(i) The searches were conducted pursuant to valid warrants;

(ii) That the officers' use of force on the occasions in question was necessary and justified; and

(iii) No "serious injury" was received by Gerald Andert.

III.

This motion is supported by the admissions in the pleading and the Exhibits and Attachments submitted with this motion.

WHEREFORE, premises considered, Defendants pray that the Court dismiss Plaintiffs' complaint for failure to

state a claim upon which relief may be granted, or in the alternative, for summary judgment.

Respectfully submitted,

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

/s/ Van Thompson, Jr.
VAN THOMPSON, JR.
Assistant District Attorney
State Bar No. 19960000
200 West Belknap
Fort Worth, TX. 76196-0201
(817) 334-1233

/s/ Barrie Howard
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200 West Belknap
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(817) 334-1233

ATTORNEYS FOR DEFENDANTS
TARRANT COUNTY NARCOTICS
INTELLIGENCE AND COORDINATION
UNIT, TARRANT COUNTY, TEXAS,
TIM CURRY, AND DON CARPENTER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Motion to dismiss or for Summary Judgment was this day served upon the Plaintiffs' attorneys of record, Don Gladden, Law Offices of Don Gladden, P.O. Box 50686, Fort Worth, Texas 76105, and William W. Harris, Esq., 1901 Central Drive #208, Bedford, Texas

76021, in accordance with the provisions of Rule 5, FED.
R. CIV. PROC. on this the 17th day of April, 1990.

/s/ Van Thompson, Jr.
VAN THOMPSON, JR.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN and §
KENNETH LEATHERMAN, §
Individually and as Friends of TRAVIS §
LEATHERMAN; GERALD ANDERT; §
KEVIN LEALOS and JERRI LEALOS, §
Individually and as Next Friends of §
SHANE LEALOS and TRAVOR §
LEALOS; PAT LEALOS; DONALD §
ANDERT; and LUCY ANDERT, §

Plaintiffs §

vs. §

THE TARRANT COUNTY NARCOTICS §
INTELLIGENCE AND §
COORDINATION UNIT; TIM CURRY, §
in his Official Capacity as Director of §
the Tarrant County Narcotics §
Intelligence and Coordination Unit; §
TARRANT COUNTY, TEXAS; DON §
CARPENTER, in his Official Capacity §
as Sheriff of Tarrant County, Texas; §
CITY OF LAKE WORTH, TEXAS; and §
CITY OF GRAPEVINE, TEXAS, §

Defendants §

CIVIL
ACTION
NUMBER
§ CA4-89-842-K

AFFIDAVIT OF TIM CURRY

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day
personally appeared TIM CURRY, who by me having
been duly sworn made the following affidavit:

My name is Tim Curry. I am above the age
of 21 years, fully competent to make this affi-
davit, and have personal knowledge of the mat-
ters of material fact hereinafter set forth, which
are true and correct.

At all times relevant and material to this
cause I have been the Criminal District Attorney
of Tarrant County, Texas.

The Tarrant County Narcotics Intelligence
and Coordination Unit (N.I.C.U.) is a "Project"
to provide a multi-jurisdictional drug task force
with a centralized coordination unit. It was
formed in 1988 and is funded primarily through
grants received from the federal government
through the Governor's Office of the State of
Texas, Criminal Justice Division, to Tarrant
County. I am Chairman of the Board of Directors
and Project Director. The N.I.C.U. is not a sepa-
rate governmental entity from Tarrant County.

Attached hereto as Attachment 1 is a true
copy of the Form 424 for the current year con-
cerning the application for the grant.

Attached hereto as Attachment 2 is a true
copy of the Interlocal Assistance Agreement of

the Tarrant County Intelligence and Coordination Unit.

Attachments 1 and 2 are business records kept in the regular course of business in the Office of the Criminal District Attorney. They were prepared at or near the time of the fact or event recorded by persons having actual knowledge, and it is the regular course of business to keep such records. I am the custodian of the records of the Office of the Criminal District Attorney of Tarrant County, Texas, and they are kept under my supervision and control.

It is not the policy of the N.I.C.U. to arrest without probable cause, to conduct warrantless searches and seizures without probable cause, or to violate the civil liberties of the citizens within its jurisdiction. It is the policy to obtain search warrants from a duly authorized magistrate prior to conducting a search of property. Only reasonable force may be used where necessary by the N.I.C.U. officers in executing any search warrant so obtained.

Further, affiant sayeth not.

/s/ Tim Curry
TIM CURRY

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

Sworn to and subscribed before me by the said TIM CURRY on this the 16th day of April, 1990.

[SEAL] ANGELA DAWN PHILLIPS
NOTARY PUBLIC
THE STATE OF TEXAS
COMMISSION EXPIRES
9-22-90

/s/ Angela Dawn Phillips
Notary Public in and for
the State of Texas

/s/ Angela Dawn Phillips
Notary's Printed Name

My commission expires:
9/22/90

EXHIBIT
A
A-77

EXHIBIT A
Att 2

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

THE TARRANT COUNTY
NARCOTICS INTELLIGENCE AND COORDINATION
UNIT INTERLOCAL ASSISTANCE AGREEMENT

WHEREAS, the detection and apprehension of individuals in the field of narcotics manufacturing and distribution is often hindered because the range of operations of the criminal offender is greater than the jurisdiction of the peace officers called upon to investigate the crime; and,

WHEREAS, the existence of a multiplicity of political jurisdictions in Tarrant County impedes the effectiveness of individual law enforcement agencies to detect and eradicate narcotics activity; and,

WHEREAS, past experience has indicated that a cooperative effort between law enforcement agencies and the Tarrant County District Attorney's Office has been effective in detecting and deterring the activities of targeted criminal groups to the mutual benefit of all the political entities of Tarrant County; and,

WHEREAS, pursuant to Art. 999b, TEX. REV. CIV. STAT. ANN. authorizing the formation of mutual aid law enforcement units, the contracting cities, County of Tarrant and Tim Curry Criminal District Attorney of Tarrant County hereby agree to participate in, and be a part of a cooperative investigative and enforcement effort to be

known and designated as the Tarrant County Narcotics Intelligence and Coordination Unit ("NICU"); and,

WHEREAS, a grant of money from the Criminal Justice Division of the Governor's Office of the State of Texas has been received to fund the establishment of the Tarrant County Narcotics Intelligence and Coordination Unit.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That Tarrant County, acting by and through Roy English, its duly authorized County Judge, Tim Curry, Criminal District Attorney of Tarrant County, and the following cities executing duplicate originals hereof, acting herein by and through their duly authorized chief administrative officer:

Arlington	Keller
Azle	Kennedale
Bedford	Lakeside
Benbrook	Lake Worth
Blue Mound	Mansfield
Burleson	North Richland Hills
Colleyville	Pantego
Crowley	Pelican Bay
Dalworthington	Richland Hills
Gardens	River Oaks
Eules	Saginaw
Everman	Sansom Park
Forest Hills	Southlake
Fort Worth	Watauga
Grand Prairie	Westover Hills
Grapevine	Westworth Village
Haltom City	White Settlement
Hurst	

do hereby covenant and agree as follows:

NICU STRUCTURE

The Tarrant County Narcotics Intelligence and Coordination Unit ("NICU") will be a part of the Tarrant County District Attorney's Office for administrative purposes. The activities of the NICU shall be supervised by a six member Board of Governors. This Board will consist of the Fort Worth Chief of Police, the Arlington Chief of Police, the Sheriff of Tarrant County, a Police Chief from the Northeast Tarrant County area to be selected by participating agencies in the Northeast Tarrant County Unit, a Chief of Police from a small police department within Tarrant County, and a chairperson, who shall be the Tarrant County District Attorney. *Ex Officio* members representing the Texas Department of Public Safety, the Drug Enforcement Administration and the Federal Bureau of Investigation shall be added to the Board of Governors as non-voting members.

The Board of Governors shall have the responsibility for policy, direction and control of NICU. The Board of Governors will have direct responsibility for the selection of a Commander for NICU. The Board will monitor the activities and accomplishments of NICU to ensure orderly progress towards attainment of all stated objectives.

There will be four enforcement units to operate in the four geographic areas of Tarrant County. These units will be known as The Greater Arlington Unit, The Greater Fort Worth Unit, The Tarrant County Unit and The Northeast Tarrant County Unit. The activities and investigations of these four units shall be coordinated by the

Commander of NICU. These units will be responsible for narcotics investigations within their geographical areas.

NARCOTIC INVESTIGATION

Narcotics investigations within the jurisdictional bounds of the political entities joining this agreement will be coordinated through NICU. All narcotic complaints and intelligence received by a law enforcement agency that is a party to this agreement will be referred to either NICU or the appropriate geographical area unit for investigation. NICU will maintain intelligence files. The geographical area units will respond to complaints in a timely manner.

ASSET SEIZURES

All asset seizures developed by NICU and the four geographic enforcement units will be prosecuted by the Asset Seizure Team of NICU. The attorneys in NICU will be responsible for representing the State of Texas and NICU in all forfeiture proceedings maintained under the provisions of the Controlled Substances Act of Texas.

There is hereby created a certain fund to be known as the NICU Asset Seizure Fund, (hereinafter called "Fund"), said Fund to be created in compliance with Sec. 5.08 of the Texas Controlled Substances Act, TEX. REV. CIV. STAT. ANN. Art. 4476-15.

All money, certificates of deposit, negotiable instruments, securities, stocks, bonds, businesses or business investments, contractual rights, real estate, personal property or other things of value derived from the sale,

manufacture, distribution, dispensation, delivery or other commercial undertaking violative of the Texas Controlled Substances Act shall be forfeited to the organization formed hereby, NICU.

Upon entry of a judgment in a forfeiture proceeding awarding monies or other proceeds as set out above to NICU, said monies or proceeds will be immediately deposited in the NICU Asset Seizure Fund. The monies and proceeds in this Fund must be used to further the purpose of NICU as required by the NICU grant award.

This Fund shall be subject to audit by the Auditor of Tarrant County, Texas.

If any conveyance or vehicle is the subject of a final forfeiture, it shall be awarded to the NICU to be used to further the purpose of NICU as required by the NICU grant award.

OFFICER STATUS

Any law enforcement officer assigned to the NICU or one of the four geographical units by a governmental entity which is a party to this agreement shall be empowered to enforce all laws and ordinances applicable in the jurisdiction of the said entities joining in this agreement, including the power to make arrests, execute search warrants, and investigate narcotics offenses outside of the jurisdiction from which he is assigned, but within the area covered by the jurisdictions of the entities which are parties to this agreement.

While functioning as a law enforcement officer assigned to the NICU or one of the four geographical

units in a jurisdiction other than the jurisdiction from which he is assigned, he shall have all the law enforcement powers of a regular law enforcement officer of such other political entity.

A law enforcement officer who is assigned, designated or ordered by the official designated by the governing body of an entity to perform law enforcement duties as a member of NICU or one of the four geographical units shall receive the same wage, salary, pension and all other compensation and all other rights for such service, including injury or death benefits and workmen's compensation benefits, as though the service had been rendered within the limits of the entity from which he was assigned. Recognizing the benefits to a participating entity to this agreement, it is agreed that all wage and disability payments, including workmen's compensation benefits, pension payments, damage to equipment and clothing, medical expense and expenses of travel, food and lodging, shall be paid by the entity from which said peace officer is assigned except as hereinafter provided.

In further recognition of the benefit to be gained by the entity participating in NICU, it is agreed that no entity that is a party to this agreement shall receive from another entity participating in this agreement or be entitled to reimbursement for any services performed pursuant to this agreement.

It is further agreed that, in the event that any law enforcement officer assigned to NICU or one of the four geographical units shall be cited as a defendant party to any civil lawsuit, state or federal, arising out of his official acts while functioning as a law enforcement officer

assigned to NICU or one of the four geographical units, said law enforcement officer shall be entitled to the same benefits that such officer would be entitled to receive had such civil action arisen out of an official act within the scope of his duties as a member and in the jurisdiction of the law enforcement agency from which he was assigned. Further, no entity shall be responsible for the civil acts of a law enforcement officer of another entity assigned to NICU or one of the four geographical units except as may be decreed by the judgment of a court of competent jurisdiction.

GENERAL PROVISIONS

This Contract is subject to all grant conditions applicable to the existing grant of the Criminal Justice Division of the Governor's Office to the Tarrant County Narcotics Intelligence and Coordination Unit, a copy of which is attached hereto.

Each party to this agreement expressly waives all claims against every other party for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this agreement.

Third party claims against members shall be governed by the Texas Tort Claims Act or other appropriate statutes, or laws of the State of Texas.

It is expressly understood and agreed that, in the execution of this agreement, no party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions.

The validity of this agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Texas.

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein.

This agreement shall become effective between the parties hereto on the day following execution of the agreement by a party, and shall continue in effect until it has been terminated or rescinded by appropriate action of an entity's governing body.

This agreement may be amended or modified by the mutual agreement of the parties hereto in writing to be attached to and incorporated into this agreement.

This instrument contains all commitments and agreements of the parties, and oral or written commitments contained herein shall have no force or effect to alter any term or condition of this agreement.

The parties agree that their collective agreement may be evidenced by the execution of an identical counterpart of this instrument by the duly authorized official(s) of each participant and the failure of any member to enter into this agreement shall not affect the agreement between and among the parties executing the agreement.

Signed this 17 day of January, 1988.

COUNTY OF TARRANT,
TEXAS

By: /s/ Roy English
ROY ENGLISH
County Judge

APPROVED AS TO
FORM AND LEGALITY

By: _____
City Attorney for
Southlake

TARRANT COUNTY
CRIMINAL DISTRICT
ATTORNEY'S OFFICE

By: /s/ Tim Curry
TIM CURRY,
Criminal District
Attorney

CITY OF SOUTHLAKE

By: /s/ illegible
Mayor _____, City of
Southlake

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN and §
KENNETH LEATHERMAN, §
Individually and as Friends of TRAVIS §
LEATHERMAN; GERALD ANDERT; §
KEVIN LEALOS and JERRI LEALOS, §
Individually and as Next Friends of §
SHANE LEALOS and TRAVOR §
LEALOS; PAT LEALOS; DONALD §
ANDERT; and LUCY ANDERT, §

Plaintiffs §

vs. §

THE TARRANT COUNTY NARCOTICS §
INTELLIGENCE AND §
COORDINATION UNIT; TIM CURRY, §
in his Official Capacity as Director of §
the Tarrant County Narcotics §
Intelligence and Coordination Unit; §
TARRANT COUNTY, TEXAS; DON §
CARPENTER, in his Official Capacity §
as Sheriff of Tarrant County, Texas; §
CITY OF LAKE WORTH, TEXAS; and §
CITY OF GRAPEVINE, TEXAS, §

Defendants §

CIVIL
ACTION
NUMBER
§ CA4-89-842-K

AFFIDAVIT OF MIKE ADAIR

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared MIKE ADAIR, who by me having been duly sworn made the following affidavit:

My name is Mike Adair. I am above the age of 21 years, fully competent to make this affidavit, and have personal knowledge of the matters of material fact hereinafter set forth, which are true and correct.

At all times relevant and material to this cause I have been the Assistant Director of the Tarrant County Narcotics Intelligence and Coordination Unit (N.I.C.U.). I am deputy custodian of the records, and they are maintained under my supervision and control.

Attached hereto as Attachments 1 and 2 are true copies of the Search and Arrest Warrant and Affidavit, dated May 20, 1989, concerning the premises at 8204 Cohoba Street in the City of Fort Worth, Texas.

Attached hereto as Attachments 3 and 4 are true copies of Offense Report 89TF70 and Supplemental Report 89TF70 concerning the execution of the Search and Arrest Warrant, dated May 20, 1989, of the premises at 8204 Cohoba Street in the City of Fort Worth, Texas.

Also attached hereto as Attachment 5 is a true copy of Tactical Operations Report No. 98-T-005, dated May 20, 1989, of the Lake Worth

Police Department. This report was made by a law enforcement officer in the regular course of his duties to report matters which he is required by law to observe and report.

Attachments 1 through 5 are records kept or received in the regular course of business by N.I.C.U. It is the regular course of business to keep and receive such records. They are kept and received by persons having actual knowledge thereof at or near the time of the fact or event recorded.

At the time of the execution of the warrant described above the officers advise that they encountered two large dogs, a doberman and a German shepherd, on the premises. There was no one present to control them. These dogs were threatening to attack the officers and it was necessary for the officers to destroy them for the protection of the officers.

Except for the shooting of the dogs, no guns were drawn and no threats were made against Charlene Leatherman or her son. It was not necessary to break in the door in order to gain entry to the residence on the property, and no property damage was done to the property or possessions of the occupants by the officers, except for the shooting of the dogs.

Further, affiant sayeth not.

/s/ Mike Adair
MIKE ADAIR

THE STATE OF TEXAS §
COUNTY OF TARRANT §

SWORN to and subscribed before me by the said MIKE ADAIR on this the 11th day of APRIL, 1990.

(Seal)

/s/ Karen Brock
Notary Public in and for the
State of Texas

/s/ Karen Brock
Notary's Printed Name

My commission expires: 10-5-92

EXHIBIT B
Att 1

WARRANT NO: 8905115

THE STATE OF TEXAS)(
COUNTY OF TARRANT)(

SEARCH AND
ARREST WARRANT

THE STATE OF TEXAS to the Sheriff or any Peace Officer of Tarrant County, Texas or any Peace Officer of the State of Texas:

GREETINGS:

WHEREAS, the Affiant whose signature is affixed to the affidavit appearing on the reverse hereof is a Peace Officer under the laws of Texas, and did heretofore this day subscribe and swear to said Affidavit before me (WHICH SAID AFFIDAVIT IS BY THIS REFERENCE INCORPORATED HEREIN FOR ALL PURPOSES) and whereas I find that the verified facts stated by the Affiant in said Affidavit show that the Affiant has probable cause for the belief he expresses therein, and establishes the existence of proper grounds for the issuance of this warrant.

NOW THEREFORE, you are commanded to enter the suspected place and premises described in said affidavit and to there search for the property described in said affidavit, and to seize the same and bring it before me, and you are commanded to arrest and bring before me each person described and accused in said affidavit. Herein fail not, but you have then and there this warrant within three days, exclusive of the day of its execution, with your return thereon, showing how you have executed the same.

/s/ Rolly Milliron
MAGISTRATE, TARRANT
COUNTY, TEXAS

DATE: 8-20-89

TIME: 6:10 P.M.

EXHIBIT B

Att 2

WARRANT NO: 8905115

AFFIDAVIT FOR SEARCH AND ARREST WARRANT

THE STATE OF TEXAS)(
COUNTY OF TARRANT)

The undersigned affiant, being a Peace Officer under the laws of Texas and being duly sworn on oath makes the following statements and accusations:

1. THERE IS IN TARRANT COUNTY, TEXAS A SUSPECTED PLACE AND PREMISES DESCRIBED AND LOCATED AS FOLLOW:

Located at 8204 Cahoba Street in the City of Ft. Worth, Texas. Described as double wide mobile home with a siding glass door which faces west towards Cahoba Street. The mobile home is brown in color and trimmed in white. The drive way to the mobile home runs east off of Cahoba Street, to a cattle gate which has a chain and pad locked attached. There are two vehicles by the mobile home and they are described as a VW Bug bearing Texas License 814-XCP and a Chevrolet Chevette bearing Texas License 291-KKK.

2. THERE IS AT SAID SUSPECTED PLACE AND PREMISES PROPERTY CONCEALED AND KEPT IN VIOLATION OF THE LAWS OF TEXAS AND DESCRIBED AS FOLLOWS:

Amphetamines, Methamphetamine, and precursors chemicals associated with the manufacture of amphetamines, or any other controlled substances and paraphernalia that are kept in violation of the law.

3. SAID SUSPECTED PLACE AND PREMISES ARE IN CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING PERSON/PERSONS:

1. Charlene Clark Leatherman W/F DOB 09-12-52
2. Marion Leatherman M/W DOB unknown

4. IT IS THE BELIEF OF AFFIANT, AND HE HEREBY CHARGES AND ACCUSES THAT:

Charlene Clark Leatherman, Marion Leatherman, and others unknown by name or description are now concealing at the said suspected premises Amphetamines, methamphetamine, or any other controlled substance or paraphernalia that are a violation of the law.

5. AFFIANT HAS PROBABLE CAUSE FOR THE SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO-WIT:

On 5-20-89 Officer G.H. Libbey #101 With the Lake Worth Police Department was on patrol on Hiawatha Trail in Lake Worth when he smelled a strong chemical odor associated with illegal manufacture of amphetamines. Officer Libbey knew this chemical smell from his past training, and experience as an odor associated in the manufacturing of illegal drugs, (amphetamines). Officer Libbey could not tell exactly where the smell was coming from due to the heavily wooded area, the wind, and the darkness around the area. Officer Libbey then attempted to find the origin of the odor which led him to the

approximate area in the 8200 block of Cahoba within the city limits of Ft. Worth. Officer Libbey then called Detective J.V. McDonald with the Lake Worth Police Department and told him that he had an odor of a clandestine lab. Detective McDonald then called the Tarrant County Narcotics Intelligence and Coordination Unit (N.I.C.U.), who in return checked the suspected location.

On 5-20-89 at about 9:00 a.m. Investigator Fowler with N.I.C.U., Detective McDonald, and Officer Libbey drove by the suspected premises where they could all smell the chemical odor. At that time Investigator Fowler and Detective McDonald noted the location, and returned to the Lake Worth Police Department for further research. While at the office Investigator Fowler checked with TU electric and found that the electric service was in the names of: Charlene Clark Leatherman and Marion Leatherman. Further research showed that both subjects had no criminal history as reported. Other information showed that Charlene had a Texas Drivers License (#08239981) with an address of 8204 Cahoba Street Ft. Worth.

On 5-20-89 at 11:00 A.M. your affiant, Stephen Farrow with N.I.C.U. drove to the area and then walked through an adjoining Boy-Scout Camp (Camp Schuman), and also smelled a strong chemical odor associated with the manufacturing of amphetamines. Your affiant observed two vehicles at that location one being a VW bug, bearing Texas license #814QCP, which was not reported by MVD. The second vehicle was a Chevrolet Chevette bearing Texas LP#291-KKK. Which was reported registered to a Doris McLerran out of Gainesville, Texas. Your affiant ran checks on all above vehicles and related information. Finding no wanted or any Criminal History information.

Your affiant was at the suspected premises for about 15 minutes and saw no activity, but did however observe all the windows covered over. The odor was very strong around the residence and into the Boy-Scout camp just to the north and east of the residence.

WHEREFORE, affiant asks for the issuance of a warrant that will authorize him to search said suspected place and premises for said property and seize the same and to arrest each said described and accused person.

/s/ Stephen J. Farrow
AFFIANT

SUBSCRIBED and SWORN to before me by said Affiant on this the 20 day of May, 1989.

/s/ Rolly Milliron
MAGISTRATE, TARRANT
COUNTY, TEXAS

EXHIBIT B
Att 3

OFFENSE REPORT
89TF70

DEFENDANT: LEATHERMAN, CHARLENE CLARK
LEATHERMAN, MARION
ALIAS:
OFFENSE: POSSESSION OF A CONTROLLED
SUBSTANCE
OFFENSE DATE: 05/20/89

LOCATION: 8204 CAHOBA STREET,
FORT WORTH, TX
INVESTIGATOR: SGT. G. FOWLER, #406
S.J. FARROW, #403
D.R. HARRIS, #402
J.L. PRITCHARD, #408
SECTOR: T.C.N.I.C.U., WEST

On Saturday, 05/20/89, at approximately 0800 hrs., this Investigator, Sgt. G.L. FOWLER currently assigned to the Tarrant County Narcotics Intelligence and Coordination Unit, West Sector (TCNICU, West) was notified in reference to a possible Clandestine Lab detected in the 8200 blk. of Cohoba, in the city of Fort Worth, which had been discovered by Patrol Officer George LIBBEY of the Lake Worth Police Department.

At approximately 0900 hrs. this investigator, Sgt. FOWLER, made contact with Detective J. MCDONALD of the Lake Worth Police Department and Officer LIBBEY. Officer LIBBEY advised that he had found the chemical odor at approximately midnight and called Det. MCDONALD. Officer LIBBEY advised that TCNICU was not contacted at that time nor did Det. MCDONALD come in due to the chemical odor not being pin pointed. Officers then took this Investigator to the suspected location starting in the 2500 blk. of Hiawatha Trail which runs north and south and to the east of the suspected location. (reference mapsco 59C & D), with the wind at that time blowing towards the southeast and directly across the suspected location all officers including this Investigator

detected a strong chemical odor known through experience and training to be associated with the manufacturing of illegal drugs (Amphetamine/P2P a phase involving the P-2 cook which emits a very strong chemical odor). The road side areas were checked for possible wash dump sites but none were located. Investigators then proceeded south on Hiawatha Trail still detecting the odor described above. Investigators then turned north bound on to the 8100 blk. of Cahoba where the odor detected above diminished in strength, but was still present. Investigators then proceeded to approximately the 8200 blk. of Cahoba to a location where the chemical odor became very strong again. At that point the wind had switched and was blowing momentarily out of an eastward direction. Located off of the east side of the 8200 blk. of Cahoba was a residence that sat approximately 50 to 75 yards off of the roadway to the east in a heavily wooded area. Investigators parked on the west side of the roadway and this Investigator, Sgt. FOWLER walked along the roadway to the mailbox and driveway to this above described residence location and immediately detected the very strong chemical odor that which is known to be associated with the manufacture of illegal drugs (Amphetamines). This Investigator was at that point for approximately 2 to 3 minutes, and never lost the very strong chemical odor. This Investigator observed a dirt drive leading east from Cahoba to an aluminum cattle gate marked with a sign. "KEEP OUT", and secured with a chain and lock. The dirt drive continued east from the other side of the fence into the wooded area. A residence could not be seen from the roadway by this Investigator, but a brown and rust color Volkswagen (no

license plate known) could be seen parked on the dirt roadway. Investigators departed the area at that point and this Investigator, Sgt. FOWLER returned to the sector office and continued research of the location as well as notifying the other unit Investigators.

At approximately 1000 hrs., TU Electric notified, Mrs MUSKA was contacted, she was advised that on the west side of Cahoba were odd numbered houses with 8149 being observed on a mailbox across the street (west) and south from suspected location by this Investigator. Mrs MUSKA advised that service ran from 8149 to 8249 in that area with 8204 being the only residence on the entire east side of Cahoba. The service at 8204 was shown by TU Electric to be in the name of Marion LEATHERMAN (sister-in-law), and Charlene LEATHERMAN. Charlene LEATHERMAN having Tx DL #08239981, and SSN #559-90-6439, with service since 1987. A drivers license check with TX LIDR on #08239981 revealed the following: Charlene Clark LEATHERMAN, W/F/DOB: 09-12-52, 5'6 145 lbs., blonde hair, green eyes, address: 8204 Cahoba, Ft. Worth, TX 76135, there was no criminal history or wanted found on Charlene LEATHERMAN nor could any history or information be found on Marion LEATHERMAN what so ever. County tax records (TXXXMAP) were checked for 8204 Cahoba and found to be in the name of F.M. Daniels, (individual who gave the land to LEATHERMAN). No information could be obtained on this subject either. Attempts to check Ft. Worth Water Records Department met with negative results due to same being closed on Saturday.

At approximately 1100 hrs., Investigators FARROW and HARRIS both from TCNICU, West arrived in the area of

the 8200 blk. of Cahoba and observed the suspected place. Inv. FARROW proceeded to Camp Leroy Schuman/Boy Scouts of America Camp, which surrounds the suspected location, and walked through the heavy woods of the camp to the property line of the suspected location and in doing so also smelled a strong chemical odor associated with the manufacturing of Amphetamines. Also observed by Inv. FARROW, were two vehicles:

1. Black VW Bug
TX 814-XCP (listed at 814-QCP in search warrant)
No MVD record
2. Brown Chev. Chevette
TX 291-KKC (listed as 291-KKK in search warrant)
Registered to: G.W. McLerran
Doris McLerran
out of Gainesville, TX. (Also neither one wanted or having a criminal history).

Inv. FARROW observed the suspected premises for about 15 minutes and saw no activity, but did observe same to appear as a double wide mobile home, brown in color with white trim having a sliding glass door which faces west towards Cahoba Street, Inv. FARROW did note that all the windows on the suspected premises to be covered over. Inv. FARROW also noted the chemical odor being very strong around the residence and into the Boy Scout Camp just to the north and east of the residence. No dogs were observed. Inv. FARROW did advise that chemical odors associated with drug labs have been reported in the area before but never found.

At approximately 1430 hrs. Inv. HARRIS and PRITCHARD both with TCNICU, West initiated constant surveillance from the roadway (Cahoba) just outside the driveway of 8204 Cahoba, which Inv. HARRIS advised the gate to the residence was still secure, but the brown and rust color VW was not visible in the driveway.

At approximately 1530 hrs. Det. MCDONALD, L.W.P.D. rode with Ft. Worth Helicopter (Air-One), and video taped the suspected premises from the air confirming the residence as described by Inv. FARROW. Upon arrival back at Lake Worth Police Department, with the serial view tape the same, was gone over by Sgt. FOWLER, Inv. FARROW and Lt. PRAILEY, Lake Worth P.D. Tactical Commander at which time he began forming his unit and raid plan procedures.

At approximately 1630 hrs., Inv. HARRIS advised that the brown and rust color VW Bug arrived at the suspected premises occupied by what he believed to be one white male. Inv. HARRIS advised that the gate to the suspected premises was now open. This information was given to Lt. PRAILEY, Tact Commander.

At approximately 1700 hrs., Tactical member, CPL. LYONS, Lake Worth P.D., (also Boy Scout liaison) advised that all the Boy Scouts had been removed from the area to a safe location.

At approximately 1755 hrs., Tactical member, LYONS and the Boy Scout Master (name not documented) from Camp Schuman returned to the Lake Worth P.D. and advised that after being on a trail that runs right up behind the property also reported the very strong chemical odor associated with the manufacturing of Amphetamines

emitting from the suspected premises. At this time Max Courtney of Forensic Consultant Services in Ft. Worth, was contacted to respond to the raid briefing. Ft. Worth P.D. Narcotics Officer McGHEE was contacted due to suspected premises being in Ft. Worth city limits, and responded. McGHEE advised also that reports of chemical odors from drug labs have been reported in this area before, but likewise never have been pin pointed.

At 1800 hrs., Judge MILLIRON, J.P. Precinct 1, 361 Debbie Lane, Mansfield arrived to sign the warrant after attempts to contact a District Judge met with negative results. Attempts to contact Judge STANK, RITCHIE, and VALDEZ also met with negative results. The warrant was signed at 1810 hrs., and given to Lt. PRAILEY, Tactical Commander for review prior to raid briefing.

At approximately 1855 hrs., the Tactical Unit arrived on the scene with the decision made by the Tactical Commander to enter the suspected premises through the woods, north of the location, not the front gate. TCNICU, West personnel were standing by on the road way waiting for a clear signal.

At approximately 1930 hrs., the brown and rust color VW departed the suspected premises south bound on Cahoba, occupied with two subjects. Tarrant County Sheriff's Office marked unit #53. Lt. CAUBLE stopped same, bearing TX LP 007-TPH, which was registered to Kenneth W. LEATHERMAN (husband of Charlene). W/M/DOB: 10-28-47, of 8204 Cahoba. Stop was made in the 8100 blk. of Cahoba. TCSO Unit #53 assisted by Inv's HARRIS and PRITCHARD identified the operator as Charlene LEATHERMAN, W/F/DOB; 09-12-52, TX DL #08239981. The

passenger was her juvenile W/M son (name not documented). Charlene LEATHERMAN was read her rights by Inv. HARRIS at approximately 1935 hrs. Search of the drivers compartment for officers safety at 1945 hrs by Inv. PRITCHARD revealed the finding of:

1. One Colt Gout, model .45 cal., semi-automatic handgun, serial #28047B70, under the drivers seat. Which was loaded with a clip of .45 cal. ammunition, but none chambered all contained in a OD green plastic case.

The gun above as well as a 26" long wooden club were confiscated pending further investigation and the possibility of filing charges, and a receipt was given to LEATHERMAN.

At approximately 1948 hrs. shots were heard from the direction of the suspected premises.

At approximately 1952 hrs. all clear, area secured given by Lt. PRAILEY, Tactical Commander. Charlene LEATHERMAN was escorted back to the scene and at 1956 hrs. presented a copy of the search warrant by this Inv. Sgt. FOWLER. Upon contact with Lt. PRAILEY he advised this Inv. Sgt. FOWLER, that his men had shot and killed two dogs. 1 male Doberman in the north east bedroom, and 1 male Shepard in the front yard. Lt. PRAILEY advised that as he was advancing through the woods towards the suspected premises he detected the chemical odor associated with a drug lab, but upon arrival at the suspected premises and upon entering same, by way of unlocked glass door, no damage to same, found no visible clandestine lab equipment nor was the chemical odor

detected inside the residence. All buildings, the residence, and vehicles on the premises were searched by TCNICU, West Investigators; assisted by Max Courtney and Tommy Eskisis of the Forensic Consultant Services. Found on the property were numerous five gallon buckets normally found at scenes of clandestine labs. No clandestine lab equipment, chemicals, or controlled substances could be found.

At approximately 2048 hrs. Lake Worth Animal Control arrived to transport the dead animals at the request of Charlene LEATHERMAN.

At 2055 hrs. all personnel departed the scene. Video and photographs of the premises were taken by TCNICU. West Investigators.

TCNICU, West Investigators Working Case:

Sgt. G.L. FOWLER, #406
D. HARRIS, #402 - Search
S. FARROW, #403 - Video
J. PRITCHARD, #408 - Evidence

T.C.S.O. Reserves:

S. Crothers - Photographs
A. Blakeman - Evidence

← N

CASE:

89TF 70

DATE:

5-20-89

① BLACK VW
BUG
14 XCP, TX

② BROWN CHEV
CHEVETTE
291-KKC, TX

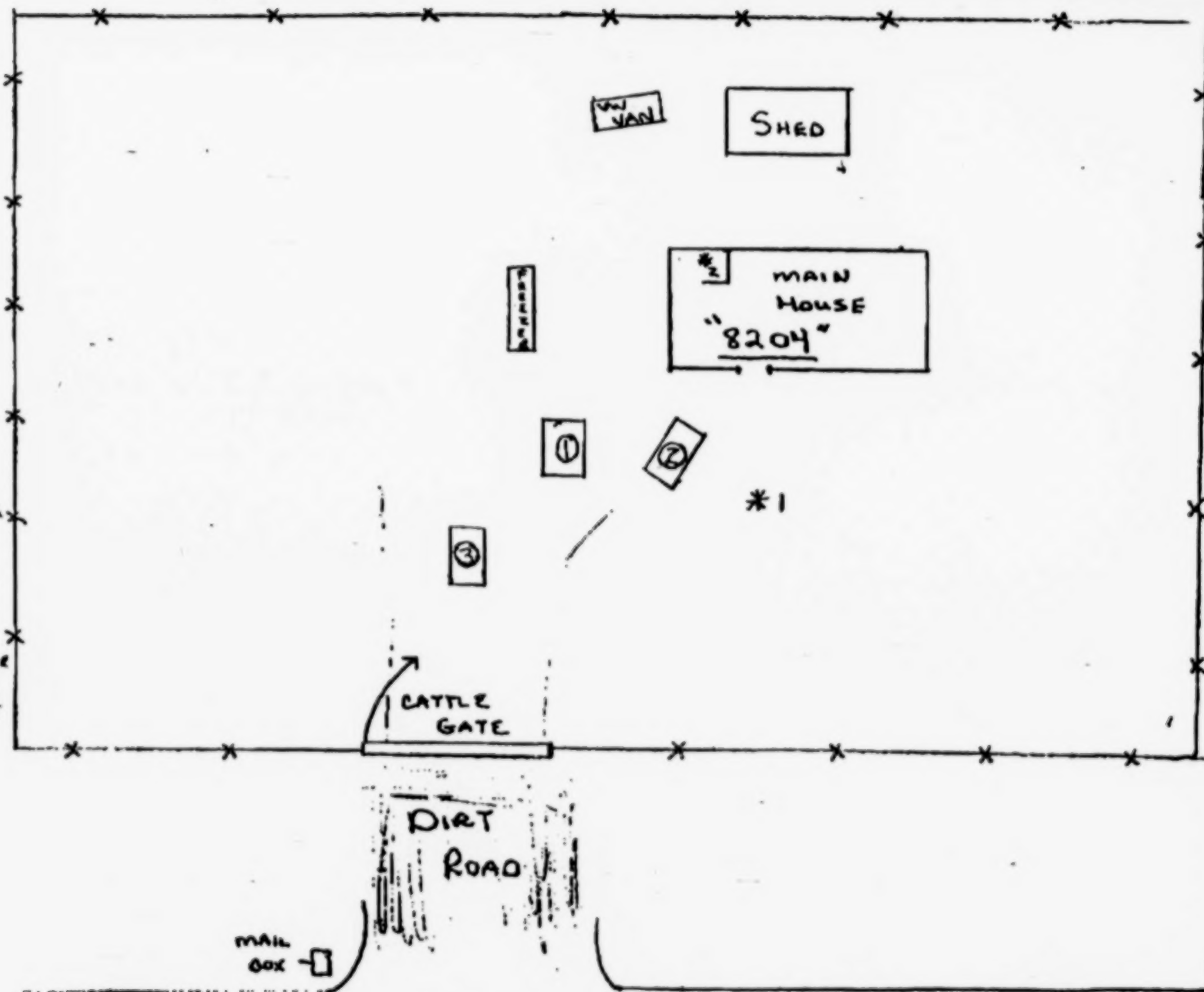
③ BROWN + RUST
VW
007-TPH, TX

*1 - DEAD
SHEPARD

*2 - DEAD
DOBERMAN

BY: SGT G.L. FOWLE

NOT TO SCALE



8200 BLK CANOBA

BEST AVAILABLE COPY

EXHIBIT B

Att 4

SUPPLEMENT REPORT

89TF70

DEFENDANT: Leatherman, Charlene Clark
(sons name unknown)
ALIAS: unknown
OFFENSE DATE: 05/20/89
LOCATION: 8204 Cahoba Street, Ft. Worth, TX
LOCATION OF
ARREST: Approximately 1/10 of a miles
South of 8204 Cahoba Street
INVESTIGATOR: D. Harris, #402
J. Pritchard, #408/Saginaw Police
Department
SECTOR: T.C.N.I.C.U., WEST

At approximately 1430 hrs. Investigator Don Harris, #402 and Investigator Jackie Pritchard, #408, both of the Tarrant County Narcotics Intelligence and Coordination Unit, West Sector, initiated surveillance of a suspect premises, located at 8204 Cahoba Street, Ft. Worth per Sgt. Gary Fowler, #406 (TCNICU, West Sector).

Both Investigators conducted visual surveillance of the suspected premises across the roadway on a dirt path adjacent to the water front of Lake Worth. Both Officers observed the gate of the driveway to be closed.

At approximately 1630 hrs. both Investigators observed a brownish orange Volkswagon Bug, bearing Texas License

Plate #007-TPH, arrive at the suspected premises and enter onto the property.

At approximately 1930 hrs. both Investigators along with Lt. Cauble, of the Tarrant County Sheriff's Department Patrol Division, observed the brownish orange Volkswagen leave the residence. Inv. D. Harris requested Lt. Cauble to stop the vehicle, after advising him that Investigators of the unit had a Search and Arrest Warrant for the suspect.

Lt. Cauble stopped the vehicle approximately 1/10 of a mile South of 8204 Cahoba Street by using the lights on his marked patrol unit. After the vehicle was stopped, Inv. D. Harris and Inv. J. Pritchard pulled in front of the vehicle and exited the under cover vehicle wearing black raid jackets displaying in large white letters, on the front and back, "POLICE". Both suspects were asked to step from their vehicle. Both suspects were advised by Inv. D. Harris that a Search Warrant had been issued for their home and then both suspects were read their Miranda Warning. Inv. J. Pritchard checked the interior of the suspects vehicle and located under the drivers seat a gun case. Inside the gun case was a loaded .45 caliber Automatic Pistol with additional ammunition. Also found in the vehicle was a police baton. Mrs. Leatherman advised both the Investigators the pistol was given to her by her husband for her safety.

After explaining the reason for the Search Warrant, two gun shots were heard in the direction of 8204 Cahoba Street. Mrs. Leatherman was advised that there was a possibility that her dogs had been shot by members of the Lake Worth Police Department Tactical Unit. Investigator

D. Harris advised Mrs. Leatherman this Investigator was unsure of the time of the incident. Both suspects were asked to follow the Officers back to the suspected premises to meet with other Officers. Upon arriving at the scene, Inv. Prailey, Lake Worth Police Department Tactical Team leader, advised that two dogs had been shot and killed. One dog was shot in the front yard and the other in the back left bedroom of the house.

During a conversation with Mrs. Leatherman's son, he stated that his father told him that someone would end up killing the dogs running loose and or fighting other dogs. His father also told him that they would be better off dead because they could not afford to feed them any longer.

DRH/dmw

EXHIBIT B
Att 5

LAKE WORTH POLICE DEPARTMENT
TACTICAL OPERATION REPORT

REPORT NUMBER: 89-T-005

DATE:

05-20-89

TIME NOTIFIED: (11:15am) 15:00 Hrs C/O

LOCATION OF OPERATION:

8204 Cahoba Drive, Ft. Worth Tx

TYPE OF OPERATION

HOSTAGE: BARRACADE:
 WARRANT: (X) 890511S SNIPER:
 CROWD CONTROL: SEARCH:
 HAZ MAT: OTHER:
 TACTICAL RESPONSE REQUESTED BY:
 Det.J.V.McDonald #24
 APPROVED BY: Sgt.Gary Fowler

TAC PERSONNEL RESPONDING AND ASSIGNMENTS

1. Lt.J.R.Prailey	Outperimeter Personnel
2. Sgt.R.E.Wadkins	1. Res.Ofc.J.W.Hardin
3. Sgt.J.R.Lyons	2. Res.Ofc.J.Bell
4. Ofc.D.T.Tatsak	3. Res.Ofc.D.Sherwin
5. Ofc.M.D.Johnson	
6. Ofc.G.H.Libbey	

SITUATION: At apx 11:15 am hours, Lt.J.R.Prailey, Tactical Unit Commander was notified by Det.J.V.McDonald, Lake Worth Police Dept, and advised that a possible drug lab had been located. Det.McDonald requested that the Tac unit be placed on "Stand-by" as the unit would be called upon later in the day. Lt.Prailey was further advised that TCNICU was working on the lab, gathering information and necessary data. Det.McDonald stated that he was working with TCNICU personnel at this time. Upon completing the conversation, Lt.Prailey notified respective Tac unit personnel that they were on stand-by until further notice.

At approximately 15:00 hrs, the TAC Unit was called out to assemble at the LWPd. By 15:30 hrs all team members were assembled.

At approximately 15:40 hrs Lt.Prailey met with Det.McDonald and Sgt.Fowler in the LWPd briefing room and viewed an ariel video tape taken by Det.McDonald. Upon viewing the video tape it was observed that there were a group of Boy scouts camping out near the area that was in question regarding the warrant. Lt.Prailey dispatched Sgt.Lyons to the area, (Camp Shuman) and had the scouts removed to a safe area.

At appx 17:00 hrs Sgt.Lyons reported back to Lt.Prailey that the area was clear and the scouts had infact been moved. At appx 17:15 hrs Sgt.Lyons along with a Boy Scout Master who knew the area, went to same to check out possible trails leading to the objective.

At appx 17:55 hrs Sgt.Lyons and Scout Master returned stating they had found a trail leading to the objective. Lt.Prailey then briefed the Tac Unit with this new information, plus the overall raid plan. The unit was given a final overall inspection for gear and weapons, plus their assignments. At 1800 hrs Judge Milliron arrived at LWPd and signed the warrant for Sgt.Fowler, NICU Supervisor.

At appx 18:45 hrs the Tac Unit departed the LWPd enroute to the objective. At appx 18:55 hrs the Unit arrived at Camp Schuman, where the vehicle was parked and the Unit began making its way to the objective through the woods.

At appx 19:20 hrs, the Unit arrived in the area of the objective. After placing the out-perimeter personnel, the unit then made its way closer to the objective. (House) at 8204 Cahoba Dr. Lt.Prailey then moved the unit into position to make entry, and dispatched the entry team to

a double sliding door. The door was found to be locked and blocked by furniture. Lt.Prailey advised Sgt.Wadkins to move the entry team around the opposite side of the house, where another double sliding door was located.

At this time the go signal was given by Lt.Prailey. As the entry team approached the double sliding door, Ofc.Tatsak and Johnson both hollered "Police" come out of the house. The Ofc's were met by two barking dogs, and no other response. Lt.Prailey was advised of the dogs. Lt.Prailey then instructed the entry team to open the door and make entry, but to be aware of the dogs, and in the event the dogs attempted to attack the Ofc's, the Ofc's would shoot the dogs, to prevent from being injured.

As Ofc.Tatsak pulled the sliding glass door back, a large brown German shepard came forth and lunged at Ofc.Tatsak, who jumped back. The dog then continued his charge towards Sgt.Wadkins. The animal was shot at this time. At the team entered the premises, Ofc.Tatsak attempted to make entry into the bedroom. As Ofc.Tatsak opened the door, a large Doberman came charging forth across a bed. It was necessary to shoot the animal at this time.

A final sweep of the house was made, and determined clear. Lt.Prailey then contacted Sgt. Fowler by hand radio and advised Sgt.Fowler that NICU personnel could now assume responsibility for the premises. Time was appx 1952 hrs.

Upon the arrival of the NICU personnel at the house, Lt.Prailey then removed the TAC Unit from the area, and returned to the LWPd. Upon arrival at the P.D. Lt.Prailey

and Sgt. Wadkins conducted a de-briefing of the raid, which is Dept. SOP.

PLAN: The basic plan was to approach the house through the wooded area and position the team as close as possible, before making entry.

OPERATION: To secure the premises for NICU personnel based on their warrant.

ARREST: YES NO

CASUALTIES: OFFICER ACTOR HOSTAGE OTHER
(Two Dogs) One Doberman, One German Shepard.

DETAILS: Ref: To Situation for complete details.

CRITIQUE: Conducted by Lt.Prailey and Sgt.Wadkins at LWPd upon completing the operation. Raid considered sucessful under the circumstances.

Lt.J.R.Prailey Sr
TAC Commander
Lake Worth Police Dept.

cc. Chief.B.C.Campbell
cc. Capt.S.C.Sosa
cc. NICU

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN and §
KENNETH LEATHERMAN, §
Individually and as Friends of §
TRAVIS LEATHERMAN; §
GERALD ANDERT; KEVIN §
LEALOS and JERRI LEALOS, §
Individually and as Next Friends §
of SHANE LEALOS and TRAVOR §
LEALOS; PAT LEALOS; DONALD §
ANDERT; and LUCY ANDERT, §

Plaintiffs §

vs. §

THE TARRANT COUNTY §
NARCOTICS INTELLIGENCE §
AND COORDINATION UNIT; §
TIM CURRY, in his Official §
Capacity as Director of the §
Tarrant County Narcotics §
Intelligence and Coordination §
Unit; TARRANT COUNTY, §
TEXAS; DON CARPENTER, in his §
Official Capacity as Sheriff of §
Tarrant County, Texas; CITY OF §
LAKE WORTH, TEXAS; and CITY §
OF GRAPEVINE, TEXAS, §

Defendants §

CIVIL ACTION
NUMBER
CA4-89-842-K

AFFIDAVIT OF ART VAN DORN

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared ART VAN DORN, who by me having been duly sworn made the following affidavit:

My name is Art Van Dorn. I am above the age of 21 years, fully competent to make this affidavit, and have personal knowledge of the matters of material fact hereinafter set forth, which are true and correct.

I am the Director of the Tarrant County Narcotics Intelligence and Coordination Unit (N.I.C.U.). I am custodian of the records, and they are maintained under my supervision and control.

Attached hereto as Attachments 1, 2, 3 and 4 are true copies of the reports of Detectives Hart, Marler, Brainard and Duff concerning the search of the premises at 2858 North Kimball Road in Southlake, Texas, on January 30, 1989. These reports were made by law enforcement officers in the regular course of their duties to report matters which they are required by law to observe and report.

Attached hereto as Attachments 5, 6 and 7 are true copies of the Search and Arrest Affidavit, the Search and Arrest Warrant and the Return concerning the search of the premises at 2858 North Kimball Road in Southlake, Texas, on January 30, 1989.

Attached hereto as Attachments 8 and 9 are the reports of Officers Brewley and Fergus of the Southlake Police Department concerning the search of the premises at 2858 North Kimball Road in Southlake, Texas, on January 30, 1989. These reports were made by law enforcement officers in the regular course of their duties to report matters which they are required by law to observe and report.

Attached hereto as Attachments 10 and 11 are true copies of the reports of Roney Testerman, Southlake Fire Department, FF/EMT, concerning the party injured in the search of the premises at 2858 North Kimball Road in Southlake, Texas, on January 30, 1989.

Attached hereto as Attachment 12 is a true copy of the report of Corporal Traweek of the Grapevine Police Department. This report was made by a law enforcement officer in the regular course of his duties to report matters which he is required by law to observe and report.

Attachments 1 through 12 are records kept or received in the regular course of business of the N.I.C.U. They were prepared at or near the time of the fact or event recorded by persons having actual knowledge thereof and it is the regular course of business of the N.I.C.U. to keep and receive such records.

Further, affiant sayeth not.

/s/ Art Van Dorn
ART VAN DORN

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

SWORN to and subscribed before me by the said ART VAN DORN on this the 11th day of APRIL, 1990.

(Seal)

/s/ Karen Brock
Notary Public in and for
the State of Texas

/s/ Karen Brock
Notary's Printed Name
My commission expires: 10-5-92

EXHIBIT C

On January 30, 1989, 10:00 a.m. I, Sgt. R.W. Hart and Officer Tim Stewart answered a Signal 8 (audible alarm) at 2500 North Kimball, the Meeks residence. Upon arrival I parked my patrol unit in front of the residence and as I exited my vehicle I smelled a very strong odor of phenacetic acid and ether. Due to my extensive training as a narcotic investigator at Texas Department of Public Safety Academy I knew these odors to be associated with a clandestine amphetamine lab. At this time I told Officer Stewart to meet with me at the front of the residence, near my patrol unit. As Stewart approached my patrol unit he got a strange look on his face and stated "Do you smell what I smell?" I told Officer Stewart that in my opinion we had a cooking drug lab at this residence or

the residence just south of our location. At this time I contacted the dispatcher and requested that she have Detective Marler meet with me at my location. Det. Marler arrived and as he was exiting his vehicle he got a good strong smell of the cooking chemicals. After Det. Marler arrived and we determined that the house and shop were not occupied, he contacted Sgt. Larry Traywick of the Tarrant County Narcotic Task Force and requested their assistance at our location. Upon their arrival the Task Force members got a good strong smell of the cooking chemicals and determined that there was in fact a cooking drug lab in the immediate area. After checking the residence and shop the Task Force members advised us that the drug lab was not at our location. At this time the Task Force members and Det. Marler went into a heavily wooded area behind the residence in an attempt to locate the drug lab, but as they moved away from the residence the smell decreased. At this point the Task Force pinpointed their investigation on the area of 2058 N. Kimball. As they were checking the south side of the residence they found the smell got stronger the closer they got to the residence located at 2050 N. Kimball. 2050 N. Kimball is the next house south of 2500 N. Kimball.

Task Force members determined that odors of the drug lab were coming from the residence or one of the many old ambulances or vans parked near the residence located at 2050 N. Kimball. Task Force members were unable to check the residence or vehicles more closely due to several white male subjects roaming around the yard and the vicious attack dog in the yard.

At this point the Task Force members and SLPD officers left the area. Sgt. Traywick advised Det. Marler that there

was probable cause to begin gathering information so a search warrant could be obtained. Det. Marler checked water records through the Southlake Water Department. Their records revealed that water consumption at 2058 N. Kimball had risen from 13,000 gallons in December 1988 to 17,000 in January 1989. Several license plate numbers had been recorded from vehicles that were parked at 2058 N. Kimball. The owners of the vehicles were identified. The post office in Grapevine was contacted and advised that persons by the last name of McKee and Lealos were receiving mail at 2058 N. Kimball. Criminal history checks were run on these subjects, the checks revealed that one of the subjects had been heavily involved in criminal activity. All information was passed on to the Drug Task Force. At approximately 3:00 p.m. Det. Marler was contacted by Sgt. Traywick and he advised that they were writing a search warrant for 2058 N. Kimball in Southlake. When Det. Marler advised me of this I had Records Clerk Daisy Neathery contact the Hilton Hotel in Killeen and leave a message for Chief Campbell to contact me as soon as possible so I could advise him of the situation. I also telephoned the third in command, Sgt. K. Allman, and advised him of the situation. Sgt. Allman stated that he was just walking out the door to go to college and would not be able to assist in executing the warrant. At approximately 6:00 p.m. Sgt. Traywick contacted Det. Marler and advised that the search warrant was written and they would be enroute to Grapevine to get the document signed. At this point I contacted City Manager Curtis Hawk and met with him in my office. I advised Mr. Hawk of the complete situation and requested his permission to use Grapevine PD Tact Team

for entry into the residence. Mr. Hawk gave his permission to proceed with the raid. I advised Mr. Hawk that I wanted to have the SLPD ambulance and one fire engine standing by while the search warrant was being executed. I further advised Mr. Hawk that the Task Force had agreed to take possession of all drugs, monies, and property that needed to be confiscated but that our department would be responsible for removing any hazardous chemicals. I advised Mr. Hawk that Western Emergency Services in Roanoke would handle that task. Mr. Hawk agreed to use them, if needed. I also told Mr. Hawk that chemist, Max Courtney, had been put on standby by the Task Force. Mr. Hawk thanked me for advising him of the situation and gave me full permission to proceed with the raid.

At this time myself and Det. Marler met with Assistant Fire Chief David Barnes at his residence and advised him of the situation and requested that he have personnel standing by. Chief Barnes agreed and stated that he would assist in any manner needed.

At 6:30 p.m. myself and Det. Marler met with the Task Force members and GVPD Tact Team leader, Captain Dale Wilkins, at the Grapevine Police Department. Capt. Wilkins advised that the area had already been scouted and the assault plan was made. Det. Marler stayed with Captain Wilkins while he briefed the Tact Team. I returned to the Southlake Police station and telephoned Reserve Officer Richard Anderson and Officer Barry Hinkle and requested that they come in to assist in the raid. I met with Officers Anderson, Hinkle, Morgan and Gregg and advised that when we were notified by Det.

Marler that GVPD was in position to hit the house, Officer Morgan would stop all traffic north bound on Kimball from Dove Road. Myself and Officer Anderson, in unit 232, and Officers Hinkle and Gregg, in unit 230, would drive to the house and remain outside the fence on the south side of the residence until the Tact Team had made entry and secured the residence. At this time I advised the fire department to station the ambulance and fire engine in the parking lot of Yates Grocery located at Dove Road and North Kimball. This parking lot is 2 blocks south of 2058 N. Kimball. Units 230 and 232 were parked at the intersection of Dove and Kimball as the GVPD van passed north bound on Kimball Road. Both SLPD patrol units waited until Det. Marler called us to move in. At this time both units drove to 2058 N. Kimball, exited our patrol units and waited outside the fence until we were notified by the Tact Team that the house was secure.

As the Tact Team was entering the house it was clearly heard that they were screaming "Police, Police, Police, Police, on the ground, Police, face down on the ground." At this time I heard several vehicles moving toward my location and I looked behind me to see the SLPD ambulance and fire engine were now stationed approximately 200 yards south of the residence.

At this point Det. Marler advised the house was secure and as SLPD personnel were climbing over the fence a GVPD Tact Team officer came out of the front door and stated "Southlake, we need an ambulance". At this time I contacted SLPD Assistant Chief Barnes by radio and stated "232 to C-2 I need your ambulance down here now". The dispatcher stated "Do I need to tone them out?" I stated "No, they are standing by". By the time I

got over the fence and ran to the house the SLPD ambulance was in front of the house. At this time I entered the residence through the front door and a GVPD Tact officer pointed to a white male who was on his knees with his hand raised. The subject had some type of scalp wound. As I approached the white male with the injury he was being guarded by a GVPD Tact Team member who was standing behind a black four foot tall bullet proof body shield. On the front of the shield, facing away from the officer's body, the word Police is clearly written in large white letters. The Tact officer was dressed in standard black SWAT team coveralls with Grapevine Police written on the left shirt pocket area in bright red letters. The coveralls also have red Grapevine Police patches on both sleeves near the shoulder area. As I approached the injured person he appeared to have a minor scalp injury. At this time I hand cuffed the white male and led him outside to waiting medical attendants. Asst. Fire Chief Barnes was assisting the ambulance attendants. As I was leaving the ambulance a GVPD Tact Team member requested that I take control of a subject they had detained in the front yard. I exchanged handcuffs on the subject and Officer Morgan arrived. This subject was placed in patrol unit 231. This subject was violent and kept stating "I'm going to sue you Mother Fuckers."

At this time I returned to the house and the Task Force members were making a walk through search of the house. At this point two females and two teenagers were sitting on the couch in the living room. One of the females was handcuffed. Due to several guns in the room, I had these subjects to stand up and Officer Hinkle checked under the couch cushions. After finding no

weapons, I had Officer Hinkle to uncuff the female. This female asked if her grandmother could join them on the couch in the living room. I escorted the female to the den and she asked an older white female to join them in the living room, the older female refused. I escorted this subject back to the living. At this point the white female asked "Would you tell me what's going on?" I advised that the Task Force members would speak to her shortly. At this time Sgt. Traywick and Det. Duff escorted a white female to the master bedroom and explained why the Tact Team had entered the residence and why the other officers were in the house. When Traywick and Duff returned they took Kevin Lealos to the bedroom and explained why a search warrant was being executed at his residence. This officer was later informed, by a Task Force member, that Kevin Lealos told Sgt. Traywick that he knew why we were there and it was because he had loaned his blue van to a friend and the friend had taken the van to Euless and cooked some chemicals in it. Sgt. Traywick then asked Lealos what he meant by cooking some chemicals and Lealos stated "That's all I've got to say."

At this time I went outside to check on the injured person. Upon arrival I was met by Asst. Fire Chief David Barnes. Chief Barnes advised that the white male inside the ambulance had refused treatment for a minor scalp wound and had refused further treatment and also refused to be transported to the hospital. I un-handcuffed this subject and he stated "We are going to sue you bastards". Paramedic, Ron Testerman, asked the white male to sign a standard form refusing transportation to the hospital, the white male stated "Fuck you, I'm not

going to sign a Goddamm thing". This statement was made in the presence of Asst. Chief Barnes, EMT Brenda Barnes, Det. Marler and myself. At this point the white male entered the residence and started telling police officers to get out of his house and at one point he grabbed SLPD Reserve Sgt. Richard Anderson grabbed the white male's hand, pushed him away and told him to back off. At this point a female stepped between Sgt. Anderson and the violent white male. At this time Officer Hinkle requested assistance from other SLPD officers due to other persons in the residence starting to get violent. Det. Marler, Officer Gregg, Officer Morgan and myself went back into the residence and attempted to calm the residents. It was apparent that the longer we were at the residence the more problems we would have. At this time I advised the people in the house that if they had any questions to contact Chief Campbell. At this time all officers cleared the scene without any further problems.

EXHIBIT C
Att 2

On January 30, 1989 at approximately 10:10 a.m. Sgt. R. W. Hart #1119 requested that I meet with him at 2500 N. Kimball. When I arrived at 2500 N. Kimball, Southlake Texas I pulled up to a circle graveled driveway in front of the residence. As I exited my vehicle I smelled a very strong odor of P2P. I spoke with Sgt. Hart and Officer Tim Stewart who both smelled the very strong chemical odor. Sgt. Hart advised that he and Officer Stewart had been dispatched to 2500 N. Kimball on an audible alarm (sig.

8) call. When they arrived on the scene he and Officer Stewart had smelled the strong chemical odor. Recognizing this odor to be P2P substance, used in the cooking of amphetamine, they notified me. Sgt. Hart and I checked the residence at 2500 N. Kimball and found it to be secure including the workshop. Both myself and Sgt. Hart continued to smell the P2P order. I then went to Sgt. Hart's patrol unit which is equipped with a mobile telephone and called the Northeast Sector of the Tarrant County Drug Task Force where I spoke with Larry Traywick. I advised Traywick of the odor and requested he come to our location because I believed there was an amphetamine lab in the residence of 2500 N. Kimball or a residence to the south. I checked the direction of the wind and found it to be coming from the south, southwest. Sgt. Traywick and his partner arrived approximately 10-15 minutes later and pulled their vehicle directly behind mine. As Traywick exited his vehicle he smelled the strong odor of P2P. The Task Force members checked the residence and workshop and determined that the amphetamine lab was not in the residence of 2500 N. Kimball. I then walked with Traywick and his partner into a wooded area south of 2500 N. Kimball. Directly south of the residence the chemical odor was very strong. The further east we walked the less we could smell the chemical odor. The house at 2500 N. Kimball and the others in the area are on a hill and their back yards slope down to a creek. In the low areas there was an odor of P2P.

There are two houses south of 2500 N. Kimball, the McKee residence at 2058 N. Kimball and the Paul M. Shia residence which is directly behind 2058 N. Kimball. The

Task Force members walked around close to these houses and determined that the odor was coming from 2058 N. Kimball. Sgt. Traywick, his partner and I walked down Kimball Road right in front of the residence. At the northeast corner of the property we again smelled the odor of P2P. The wind was still blowing from the south-southwest. We were walking from the south of the residence and until we got to the northeast corner of the property we could not smell anything. As we left the area we obtained a license plate number of a vehicle parked in front of the residence at 2058 N. Kimball. The license plate number Sgt. Hart obtained was Texas 2683GH. At SLPD I had the Court Clerk run the license plate 2683GH through her computer to see if anyone in that vehicle had ever been issued a citation in Southlake. The Court Clerk advised that a Jeffrie D. McKee, W/M DOB 08-28-50 who resides at 2802 Tumbleweed in Grapevine had been issued a citation for No Proof of Insurance on 05-28-88. I then had the Southlake Water Dept. employee pull the file for 2058 N. Kimball. I learned that the water was in the name of Deborah McKee and that in January of 1989 they had used 17,270 gallons of water. I checked this amount of water to the amounts of water they used in the past and the records revealed the use was: August, 1988 20,820, Sept. 13,120, Oct. 10,940, Nov. 12,810, and Dec. 13,570. I added these figures up and divided them by the number of months involved and their annual monthly average water at 10,088 gallons for the past five months. In January 1989 they used 17,270 gallons. I then had Sgt. Hart call the Grapevine Post Office to see who was receiving mail at 2058 N. Kimball. The Post Office advised Sgt. Hart of three last names for the residence:

Andert, McKee and Lealos. I then had these last names checked against offense cards in Dispatch where I discovered that a Kevin Scott Lealos W/M DOB 09-19-53 had reported a theft \$750/20,000 in 1986. Lealos' address at that time was 2058 N. Kimball. I then had the dispatcher run a criminal history on the subject Lealos. Lealos had the following arrests: one burglary w/no convictions: one theft/larceny w/one conviction: one forgery w/one conviction; one weapons charge w/no conviction; 2 DWI w/no convictions. Lealos' last arrest was 12/16/88 for Burglary with Irving PD. I then went back to the area and spoke with Thomas Walker of 2050 N. Kimball. I told Mr. Walker we had some complaints of an obnoxious odor in the area. Mr. Walker advised that he had smelled the odor before and that he believed it was coming from either 2058 N. Kimball or the house behind it (the Shia residence). At approximately 1400 hours Officer Tim Stewart stopped a vehicle on a traffic violation. The vehicle stopped was a 1988 GMC P/U bearing Texas lic. plate 2683GH. The driver of the vehicle was Deborah Lynn McKee W/F DOB 09-29-50 who resides at 2802 Tumbleweed in Grapevine. I then drove by 2802 Tumbleweed in Grapevine and observed a 1981 Cadillac 2 dr. parked in front of the residence. The registration on the vehicle returned to Deborah McKee of 2802 Tumbleweed. I then returned to SLPD and advised Sgt. Traywick of the above information. Traywick advised me that a search warrant was being prepared for the residence at 2058 N. Kimball.

Sgt. Hart and I then returned to the area and walked behind several houses and could not detect any chemical odor. The houses were south of 2058 N. Kimball from 1790 N. Kimball to 2050 N. Kimball. Sgt. Hart and I then

drove to Les and Joy Gibson's house at 2800 N. Kimball where we spoke with Mrs. Gibson. Mrs. Gibson advised us that she smelled a strong odor about two or three times a month when the wind was blowing out of a certain direction. The smell was so bad that she had her septic tank pumped thinking it was sewer gas. About 10 yards south of the Gibson house we could smell the odor of P2P. Gibson also advised us that when she had to pick up a UPS package at the Shia residence that the odor was very strong outside but she did not smell anything inside the residence. Mrs. Gibson allowed us on her property and as we walked south toward 2500 N. Kimball and 2058 N. Kimball the smell of P2P got stronger.

At approximately 6:00-6:15 p.m., I went to GVPD to meet with Capt. Wilkins and Sgt. Traywick. Sgt. Traywick had a search warrant issued for 2058 N. Kimball and we planned the raid on the residence. The Grapevine Tact Team was dressed in black overalls with Grapevine Police Tactical in red letters on their shoulders and Grapevine Police Department Tactical on the left breast pocket. The Tact Team was briefed and then they went to the staging area on Dove Road at the fire station. While they were going over final briefing I telephoned Thomas W. Walker at 2050 N. Kimball and informed him that a search warrant was going to be executed around his residence and requested that he leave the area which he agreed to do. I then drove to the Shia residence and advised him that a search warrant was going to be executed in the area and that if he didn't leave the house to stay in the house until it was over. I did not smell any P2P coming from inside the house. I then returned to the staging area. Final plans were made and I got into the Grapevine Police Dept. van

along with the Tactical Team and we proceeded to go to 2058 N. Kimball. We pulled into the gravel driveway on the south side of the residence. The van stopped and the Tactical Team exited the van. I heard officers scream "Police, get down on the ground". I heard the back door being forced open and I again heard "Police, get on the floor". I then exited the van and walked to Capt. Wilkins' vehicle which was parked right behind the van. As I was talking to Capt. Wilkins the Tact Team, inside the residence, requested an ambulance. I got on my portable radio and requested an ambulance. I then ran approximately 100 yards to the front gate on the north east side where I stopped the ambulance and opened said gate. Sgt. Hart came out of the house with a white male that had a slight cut on his forehead. Sgt. Hart transported him to the ambulance. I then entered the residence with members of the Narcotics Task Force. Inside we observed several people (I believe 6 or 7) inside. All persons were sitting either on couches or chairs. We walked through the house and did not find a drug lab. I then went back outside where I heard the man with the cut on his forehead refuse to sign a treatment refusal form. The man then became very belligerent toward all officers. I heard him say that he could "whip any two officers" and that if his oldest son had been there he would have "killed everyone there" because his son was the "toughest Son of a Bitch around" and he was "just as tough". The white male with the cut continued to be very belligerent. The Task Force members also spoke with the owners of the residence to advise them of why they were there.

I then went outside in the driveway where I spoke with Donald Andert (identified in the newspapers). I told

Andert why we were there and he sniffed the air and smelled the P2P but stated that he did not know anything about amphetamine. Donald Andert then told me that he thought we were there because of all the cars and that we thought they were "cutting cars". Donald Andert then seemed to calm down and he went back to work on his car. I then went outside the fence and waited for the Task Force members to finish. We then left the area and returned to SLPD. The raid started at approximately 1945-2000 hours and all officers cleared approximately 2110-2120 hours.

Det. Jeff Marler #1108

EXHIBIT C
Att 3

Tarrant County Narcotics Intelligence
and Coordination Unit
NORTHEAST SECTOR
SUPPLEMENT REPORT

Number: 89-036-NE Date Reported: 1-30-89

Location: 2058 Kimball, Southlake, Texas

Officer: BRAINARD I.D.: #108

Supervisor: _____ I.D. _____

Page 1 of 1

On Monday, January 30, 1989, at approximately 11:00 a.m., I was called by Det. J. Marler, Southlake Police

Department, who stated that he was at a residence on Kimball Road, in Southlake, Texas, on a burglar alarm, and he was smelling a strong odor that he associated with the illicit manufacturing of Amphetamine. Marler had requested assistance from the Task Force in identifying the source of the odor.

Myself and L. Traweck, also of the NE Task Force, responded to Marler's location on Kimball Road, and immediately upon exiting our vehicle I smelled a strong odor. While walking around in the area, we determined the odor was originating from 2058 Kimball Road. The odor was not present on the South side of the residence, and as we approached the North side of the residence the odor was extremely prevalent. The wind was from the South, blowing North. The strongest area of the odor seemed to be emitting from the garage/driveway area of the premises.

Traweck and I returned to the Task Force Offices, discussed the situation, and Det. Duff prepared a Search Warrant for the premises based on our information and at the request of Det. Marler.

Entry onto the premises was conducted later by the Grapevine Tactical Unit, and I remained outside the residence where I assisted in the search. No functioning laboratory was found as predicted, nor any equipment used in the manufacturing of Amphetamine. However, I did detect a slight odor of Phenyl-Acetic Acid and ether in the driveway area. No further action was taken by this office.

EXHIBIT C

Att 4

Tarrant County Narcotics Intelligence
and Coordination Unit

NORTHEAST SECTOR

Incident REPORT

1. Offense search warrant
2. Case Number 89-036-NE
3. Location Of Offense 2058 N. Kimball Rd. Southlake
4. Complainant's Name/Address TCNICU-NE
5. Date/Time Of Occurrence 1-30-89 / 8:00 pm
6. Reporting Officer/I.D. Number M.W. Duff 105
7. Date Of This Report 1-30-89
8. Approving Supervisor T. O'Connell #101

9. Suspect Information

Name	R/S	D.O.B.	Address
1. Kevin Scott Lealos	WM	9-10-53	2058 N. Kimball Rd. Southlake
2. _____	_____	_____	_____
3. _____	_____	_____	_____

10. Seizure Attached To This Offense?

() Yes (X) No

11. Elements Establishing The Offense

On 1-30-89 at about 11:00 pm Detective Brainard was contacted by Detective Marler with the Southlake police in reference to a possible clandestine amphetamine lab. Marler advised that while conducting a burglary investigation on N. Kimball Rd., Southlake officers detected an order that they believed to be an amphetamine lab. Marler contacted Narcotics Task Force Officer Brainard who contacted Task Force Officer Traweek. Both went to the location in Southlake and as described in the Search Warrant affidavit that was later prepared, isolated the odor to the suspected place, 2058 N. Kimball Rd. Southlake, and positively identified the odor as an amphetamine lab. Investigation was conducted to identify the residents and a search warrant was prepared. During its preparation, Marler advised that he had checked again and that he was certain that the odor was coming from this house. The warrant was presented to Judge Boring and signed. A briefing was held at Grapevine PD on the execution of the Search Warrant. There is an agreement between Southlake PD and Grapevine PD, that Grapevine's Tactical Team is utilized for Southlake when needed. During the tactical planning for the execution of the Search Warrant, neighbors were contacted and advised that they should evacuate their homes due to the potential hazards of a clandestine lab. During this contact, one of the neighbors reported that they had observed a lot of suspicious activity at that residence, primarily at night. Additionally a neighbor reported detecting a strong unusual odor from that residence that they could not identify. These neighbor contacts were intentionally not made earlier in the investigation, due to the possibility that neighbors could warn suspects of a

police investigation and jeopardize the case. The neighbors were contacted just prior to entry for safety reasons. At about 8:00 pm, the Grapevine Tactical Team made entry into the residence. Task Force members Duff, Traweek, Brainard, and Hargrove waited about a block away until the location was secured, and the search could be conducted. We were able to hear the officers yelling "Police" numerous times, but from our location we could not see the activity at the house. An ambulance was requested for an injured person at the scene. After the residence was secured, Task Force members entered the residence to conduct a search. Upon arrival inside the residence there was a great deal of confusion and the residents were very upset and uncooperative towards the tactical officers and the patrol officers. A quick preliminary search by Duff and Traweek revealed that there was no lab, no odor within the house, nor any chemicals or equipment associated with manufacturing. Mrs. McKee was located and taken aside. Traweek and Duff attempted to explain what was occurring to her. From the backroom we were in we heard another outburst of noise from the living room area and found that Kevin Lealos had entered the house and was very irate. We contacted him, took him aside and attempted to calm him down and answer his questions. He kept asking if this Search Warrant was a result of his van being parked outside. When asked what he was talking about, Lealos advised that he let someone borrow the van, and learned that it was used to 'haul some stuff' and that it was involved in an incident in Euless. He became very secretive about this issue and refused to talk further about the van, although he brought it up several times. It was learned that a 62 year old male at the location was injured during the entry by

an officer. No Task Force persons witnessed any of this. The older male was very hostile and irate even after everyone else had calmed down. He continually made threats to officers and stated that he would kill the officer who hit him. The subject advised that he fought with the officers when they made entry because he did not know who they were. The gentleman and family advised that they thought they were Monster. The resident that reported seeing suspicious activity at the residence was Mr. Cisco who lives at 2819 Cliffside, Grapevine, TX. phone (817) 488-9349.

EXHIBIT C
Att 5

STATE OF TEXAS)

SEARCH AND ARREST
AFFIDAVIT

COUNTY OF TARRANT)

THE UNDERSIGNED AFFIANT, BEING A PEACE OFFICER UNDER THE LAWS OF TEXAS, AND BEING DULY SWORN ON OATH, MAKES THE FOLLOWING STATEMENTS AND ACCUSATIONS:

1. THERE IS IN TARRANT COUNTY, A SUSPECTED PLACE AND PREMISES, LOCATED AS FOLLOWS:

A RESIDENCE KNOWN AS 2058 KIMBALL RD. SOUTHLAKE, TARRANT COUNTY TEXAS. THE RESIDENCE IS FURTHER DESCRIBED AS BEING A SINGLE STORY SINGLE FAMILY DWELLING OUTWARDLY CONSTRUCTED OF BRICK THAT IS TAN IN COLOR, WITH A BROWN ROOF. THE FRONT DOOR IS RED IN COLOR AND FACES TO THE EAST. THERE IS A GARAGE ON THE NORTH EAST END OF THE HOUSE WITH DOUBLE DOORS. THERE IS A BLACK MAIL BOX AT THE FRONT OF THE PROPERTY BY THE STREET WITH THE NUMBERS '2058' ON IT IN GOLD.

2. THERE IS, AT SAID SUSPECTED PLACE AND PREMISES, PROPERTY CONCEALED AND KEPT IN VIOLATION OF THE LAWS OF THE STATE OF TEXAS, AND DESCRIBED AS FOLLOWS:

CONTROLLED SUBSTANCES AND CHEMICALS USED TO MANUFACTURE CONTROLLED SUBSTANCES, NAMELY AMPHETAMINES / METHAMPHETAMINES AND THOSE CHEMICALS USED IN THE MANUFACTURE OF AMPHETAMINES. LABORATORY GLASS WARE AND OTHER EQUIPMENT USED IN THE MANUFACTURING PROCESS.

3. SAID SUSPECTED PLACE AND PREMISES ARE IN THE CHARGE AND CONTROL OF EACH OF THE FOLLOWING PERSONS:

DEBORAK McKEE, A WHITE FEMALE
JEFFEREY D. McKEE, A WHITE MALE, 8-28-50
KEVIN SCOTT LEALOS, A WHITE MALE, 9-10-53

4. IT IS THE BELIEF OF THE AFFIANT, AND HEREBY CHARGES AND ACCUSES THAT:

SUSPECTS ARE IN POSSESSION OF CONTROLLED SUBSTANCES, CHEMICALS AND EQUIPMENT USED TO MANUFACTURE CONTROLLED SUBSTANCES. SUSPECTS ARE MANUFACTURING CONTROLLED SUBSTANCES.

5. AFFIANT HAS PROBABLE CAUSE FOR SAID BELIEF, BY REASONS OF THE FOLLOWING FACTS AND INFORMATION:

A. YOUR AFFIANT, M.W. DUFF IS A PEACE OFFICER FOR THE CITY OF EULESS AND HAS BEEN FOR OVER FIVE YEARS. YOUR AFFIANT HAS BEEN A NARCOTICS INVESTIGATOR SINCE JANUARY 1987, AND HAS BEEN ASSIGNED TO THE TARRANT COUNTY NARCOTICS TASK FORCE SINCE JANUARY, 1988.

B. YOUR AFFIANT WAS CONTACTED BY DETECTIVES TRAWEEK AND BRAINARD, WHO ARE ALSO ASSIGNED TO THE TARRANT COUNTY NARCOTICS TASK FORCE, ON THIS DATE REGARDING NARCOTICS INFORMATION.

C. BRAINARD AND TRAWEEK RECEIVED INFORMATION ON THIS DATE FROM DETECTIVE MARLER WITH THE SOUTHLAKE POLICE DEPARTMENT ABOUT A RESIDENCE KNOWN AS 2058 N. KIMBALL RD. IN SOUTHLAKE TEXAS. MARLER ADVISED THAT WHILE IN THE AREA OF THIS RESIDENCE ON AN UNRELATED POLICE MATTER, HE DETECTED THE ODOR OF AN AMPHETAMINE LABORATORY IN THE AREA. MARLER IS FAMILIAR WITH THE ODORS ASSOCIATED WITH THE MANUFACTURING OF AMPHETAMINES. MARLER RELAYED THIS INFORMATION TO DETECTIVE BRAINARD.

D. BRAINARD AND TRAWEEK WENT TO THE AREA TO ATTEMPT TO LOCATE THE SOURCE OF THE ODOR AND TO IDENTIFY THE ODOR. BOTH INVESTIGATORS WERE ABLE TO POSITIVELY IDENTIFY THE ODOR AS THE ODOR THAT THEY RECOGNIZED IN LIGHT OF THEIR EXPERIENCE AS NARCOTICS INVESTIGATORS AS THE ODORS GIVEN OFF BY A CLANDESTINE AMPHETAMINE LABORATORY. BOTH TRAWEEK AND BRAINARD POSITIVELY IDENTIFIED THE SUSPECTED PLACE NAMED ABOVE AS THE SOURCE OF THE ODORS.

E. TRAWEEK AND BRAINARD HAVE BOTH BEEN PRESENT ON SEVERAL OCCASIONS WHEN WARRANTS WERE EXECUTED ON OPERATING AMPHETAMINE LABORATORIES.

F. WATER RECORDS SHOW THAT THE SERVICE AT THE SUSPECTED PLACE IS IN THE NAME OF DEBORAH MCKEE.

G. A BLACK PICK UP BEARING TEXAS LICENSE 2683GH WAS SEEN IN THE FRONT YARD AND A BLUE VAN BEARING TEXAS LICENSE 9973RG WAS SEEN INSIDE THE FENCED AREA. THE BLACK PICK UP RETURNS TO JEFFEREY MCKEE AND THE VAN RETURNS TO KEVIN SCOTT LEALOS.

H. LEALOS SHOWS TO HAVE A CRIMINAL HISTORY WITH FIVE ARRESTS, INCLUDING WEAPONS, THEFT, AND BURGLARY. JEFFEREY MCKEE WAS IDENTIFIED BY TEXAS D.L. 02781670.

WITNESS MY SIGNATURE THIS THE 30TH DAY OF JANUARY, 1989, AT 4:35 O'CLOCK PM. 1989.

/s/ Michael Duff
AFFIANT

SUBSCRIBED, AND SWORN TO, BEFORE ME, ON THIS THE 30TH DAY OF JANUARY, 1989, AT 4:35 O'CLOCK PM.

/s/ Illegible
MAGISTRATE IN AND FOR
TARRANT COUNTY, TEXAS

EXHIBIT C
Att 6

SEARCH AND ARREST WARRANT

STATE OF TEXAS)
)
COUNTY OF TARRANT)

THE STATE OF TEXAS TO THE SHERIFF, OR ANY PEACE OFFICER OF TARRANT COUNTY, OR ANY PEACE OFFICER OF THE STATE OF TEXAS.

GREETINGS:

Whereas, complaint, in writing, under oath has been made before me, by the Affiant, whose signature is affixed to the Affidavit, is a Peace Officer under the Laws of Texas, and said Affidavit is, by this reference incorporated herein for all purposes, and having stated facts and issuance of this warrant: You are therefore commanded to

forthwith search the place named therein, and described as the residence of; DEBORAH McKEE, JEFFREY McKEE 2058 N. KIMBALL RD. SOUTHLAKE, TEXAS,

including all other structures, and places on the premises, in the City of SOUTHLAKE, County of TARRANT, State of Texas, therein named and described where the said: CONTROLLED SUBSTANCE

To-wit: AMPHETAMINES, METHAMPHETAMINES CHEMICALS USED IN THE MANUFACTURING OF AMPHETAMINES AND METHAMPHETAMINES.

is alleged to be kept and concealed, and if you find that for which you are directed to search, you will seize and bring it before me. You will arrest and bring before me, each person described and accused, in said Affidavit:

DEBORAH McKEE, WHITE FEMALE,
JEFFEREY D. McKEE, WHITE MALE, 8-28-50
KEVIN SCOTT LEALOS, A WHITE MALE, 9-10-53

HEREIN, FAIL NOT, and due return make hereof to me, within three (3) days exclusive of the day of it's issuance, and the day of it's execution.

WITNESS my signature, this the, 30TH DAY OF JANUARY, 1989."

/s/ Illegible
MAGISTRATE IN AND FOR
TARRANT COUNTY, TEXAS

EXHIBIT C

Att 7

TARRANT COUNTY NARCOTICS INTELLIGENCE
AND COORDINATION UNIT
SEARCH WARRANT RETURN

NUMBER: 89-036-NE

THE STATE OF TEXAS)
)
COUNTY OF TARRANT)

CAME TO HAND ON THE 30th DAY OF January,
1989, AT 4:35 O'CLOCK p.m.

EXECUTED ON THE 30th DAY OF January, 1989, AT
8:10 O'CLOCK PM.

EXECUTED BY: M.W. Duff

LOCATION SEARCHED: 2058 N. Kimball Rd
Southlake Texas

/s/ M. W. Duff
OFFICER MAKING RETURN

SEIZED ITEMS

No Items seized.

No Persons arrested.

/s/ Illegible
Magistrate in and for Tarrant
County, Texas

EXHIBIT C
Att 8

(Logo)

Grapevine Police
Department

SUPPLEMENTAL or CONTINUATION REPORT

Date

1-30-89

* * *

On 1-30-89 at approximately 8:10 A.M. I was involved in a detail of the Grapevine Police Emergency Response Team. The detail involved securing the residence at 2058 Kimball Road for the purpose of search warrant execution authority of Southlake Police Department.

I entered the residence on the entry team. I was the second officer to enter. All officers that entered were wearing the Grapevine Police E.R.T. uniform and M.S.A. Air Packs due to the allegation that the location was an illicit drug lab. As I entered I shouted police officer to identify myself as such. I held my service revolver in my right hand and a department issued flashlight in my left hand. I first encountered a white male individual near a bar area attached to the kitchen. I shouted to the subject that I was a police officer and for him to lay down on the floor. I had my service revolver pointed at the subject. The subject did not lay down as directed but continually asked "who are you." I repeatedly over a period of several seconds, shouted "Police get down on the floor." The subject refused to do so and now advanced toward me closing a five yard distance to approximately two yards. I

backed up two or three steps and shouted once again, "Police get down." At this time the subject laughed and said, "What the fuck is this!" The subject then lunged toward me and with his left hand took hold of the barrel of my service revolver. At this point I feared the actor was indeed attempting to disarm me. I struck the actor with the flashlight striking him in the upper forehead. The actor released my revolver and fell to the floor. The individual remained on the floor and was taken into custody by a Southlake Officer.

I observed that the white male had sustained a laceration to his head during the struggle. I requested a paramedic be alerted outside to treat the individual.

Southlake Officers took charge of the scene at which time the E.R.T. unit left the scene.

Reporting Officer
Bewley

I.D #
339

EXHIBIT C
Att 9

(Logo)

Grapevine Police
Department

SUPPLEMENTAL or CONTINUATION REPORT

* * *

On Monday 1-30-89 the E.R.T. team executed a search and arrest warrant for Southlake Police. Myself and Greg

Brewley were the first two subjects in the door after Hudson opened it. We immediately encountered 5 subjects in the kitchen area (2 W/M, 3 W/F) and one of the subjects was on the side of the Bar closest our entry point. We were all yelling "Police Get Down" and as we secured the subjects the older white male subject was approached by Brewley and was told to get down on the floor and the subject started to laugh at Brewley. He was again ordered to get down we were the police and he started toward Brewley. At this time the younger son started across the bar. The older subject grabbed Brewley's gun by the barrel at which time Brewley struck the older man to back him up. The younger son was approx $\frac{1}{2}$ way over the bar when I stopped him by pointing my weapon in his face and screamed "Get back behind the bar and lay down on the floor." The subject did it and I followed him over the bar and secured him along with the three W/F's that were in the kitchen and at this time I was assisted by T. Smith. We secured the house, called for medical help for the older W/M and then left the house.

Reporting Officer
D. Fergus

I.D.#
334



EXHIBIT C
Att 10

BEST AVAILABLE COPY

NO. 1 of 1 PATIENTS

1. INCIDENT NO. 787-0000
2. TIME OF ALARM 2013
3. DATE 1/30/99
4. () FALSE ALARM () WMO / TRANS
5. AMBULANCE 1 DIST
6. MUTUAL AID

SECTION 1: PATIENT INFORMATION

1. Alarm Location: 2058 N. Kimball Apt. 1
2. Patient Name: James Andrew DOB 9/29/24 Age 64 Race W M 1 FI
3. Address: 2058 N. Kimball City/State SOUTH LAKE
4. DL #
5. Medical
6. Responsible Party Address
7. Place of Employment
8. Responsible Party
9. Relationship
10. Physician
11. Phone
12. BSN/Medicare

SECTION 2: TIME/DISPATCH INFORMATION

8. Incident Time
9. Call Received
10. Amb. Dispatch
11. Arrived Time
12. Arrived Dest
13. Return Svc
14. Destination
15. Physician
16. Driver MTESERMAN
17. Alt A. BARRIS
18. Other
19. Fire () Police () On Scene

SECTION 3: MEDICAL HISTORY

20. Vital Signs BP 22/110 P 104 R 12 Time
BP 110 P 104 R 12 Time
21. Known Allergies NO
22. Medications NO

23. LOC Con () Semi () Uncon () RESP. Norm () Labor () ABS ()
24. Bleeding Non () Min () Mod () Sev ()
25. Pain Non () Min () Mod () Sev ()

26. Pupils: Equal () Uneq () Const () Dilated ()
27. Chief Complaint Small contusion forehead

28. Obstetric Preg G 1 P 1 Con 1 Min
29. Code 1 () 3 () Priority 1 () 2 () 3 ()

SECTION 4: LOCATION OF INJURY/ILLNESS

30. () Head
31. () Face
32. () Eye R/L
33. () Neck
34. () Back
35. () Chest
36. () Abdomen
37. () Pelvis
38. () Upper Extrem R/L
39. () Lower Extrem R/L
40. () Cardiovascular
41. () Respiratory

SECTION 5: TYPE OF INJURY/ILLNESS

42. () App Assault
43. () Breathing Diff
44. () Burn
45. () Diabetic
46. () Elec Shock
47. () Female Comp
48. () Head Attack
49. () Injured Person
50. () Maternity
51. () Med Emergency
52. () MVA
53. () Overdose
54. () Stab/Cutting
55. () Stroke
56. () Seizures
57. () Suicide (Att)
58. () Uncon Person
59. () Other

SECTION 6: AID PROVIDED

60. () Back Board
61. () C-Collar
62. () Control Bleed
63. () CPR
64. () Defib
65. () Destrolix
66. () EKG
67. () EOA Intub
68. () ET Intub
69. () IV
70. () MAST
71. () Medication
72. () OB Care
73. () Rotate TK
74. () Splinting
75. () Suction
76. () Oxygen Lpm
77. () Other

SECTION 7: DEFINITIVE CARE

78. Aminophylline
79. Atropine
80. Benadryl
81. Bretylium
82. Calcium CHL
83. Decadron
84. Dextrose 50%
85. Dopamine
86. Epl 1:1,000
87. Epl 1:10,000
88. Isuprel

89. Lasix
90. Lidocaine 1%
91. Lidocaine 4%
92. Morphine
93. Narcan
94. Nitrous Oxide
95. Nubain
96. Sodium Bicarb
97. Valium
98.
99.

100. RTS Refused to Sign. RTs was phoned and verbally released. RTs expressed that new treatment required treatment and thus part

101. Physician or Nurse
Signature Y SGT Phil Abbott #1119
Yo me he negado ha aceptar transportation en ambulancia hoy
I have refused an offer of ambulance transportation on this date 1/30/99
Signature Officer M. Mag #1130
Patient and/or Responsible Party refused to sign this refusal statement Date 1/30/99
Time 9:34 Signature of Attendant making offer Officer M. Mag #1130

EXHIBIT C

Att 11

DATE; 1/30/89

RUN#A89-019

PATIENT;
JERRAL ANDERT
NATURE; P.D.ASSIST

B.BARNS

R.TESTERMAN

Dispatched to a police standby at N.Kimball and Dove. Upon arrival found w/m walking from house at 2058 N. Kimball Pts had a small contusion with approx 1/4 in laceration to for head. Pts was assisted by police officer. Pts was in handcuffs. Pts only complaint was lac on forehead. Started treatment on pts, bandage forehead, took vitals. Police officer at this point released patient. Pts stripped bandage off as he left ambulance. Pts stated he refused treatment and was not signing anything. At this point cleared scene returned to station.

/s/ Roney Testerman 362
RONEY TESTERMAN
FF/EMT - P

EXHIBIT C
Att 12

(Logo)

Grapevine Police
Department

SUPPLEMENTAL or CONTINUATION REPORT

☒ Supplemental

☐ Continuation

Date

013089

Time

8:10 p.m.

Offense Reported
Search and Arrest
Warrant

Address Occurred
2058 North Kimball,
Southlake, Texas

Complainant
State of Texas

Date of this report:
020189

On Monday, January 30, 1989 at approximately 8:10 p.m., the Grapevine Emergency Response Team made entry at 2058 North Kimball Road at the request of Southlake Police Department for a narcotics search warrant prepared by the Tarrant County Narcotics Task Force. At approximately 8:15 p.m., Cpl. Traweck and Det. Duff entered the residence to check for any evidence. As I walked into the house a Southlake officer was guarding four (4) white females in a small room off to the left. An elderly lady was sitting on the couch in the livingroom with another Southlake officer in there. Myself and Det. Duff checked the house briefly for chemicals and lab equipment and found no evidence of such.

I asked the females in the front room who the owner of the house was. Mrs. Lealos stated she was the owner. Myself and Det. Duff talked with Mrs. Lealos explaining what was going on. While talking with Mrs. Lealos in the master bedroom for approximately five (5) minutes, we heard a commotion in the livingroom area. Mrs. Lealos stated that that was Kevin Lealos. We went into the livingroom and took Kevin Lealos back to the master bedroom and explained to him what was going on. Kevin made the statement, "I know what this is about, it's because of the van isn't it." When asked to explain, Kevin stated that he had loaned his van to someone and they had used it to boil some stuff in Euless and when he found out he went and got the van. When asked what they were boiling, Kevin stated, "I am not going to say anymore." When we walked back into the livingroom, an elderly man was ranting and raving about what had happened. Myself, Det. Duff, and Kevin were going out the back door to check the backyard. The elderly man started yelling, "Are one of you the asshole that hit me?" I explained to the man, who stated his name was Gerald Andert, that the entry team had left. Mr. Andert stated, "You get that little punk back here with the blood on his stick that hit me and I'll kill him myself." I advised Mr. Andert that he knew we were police officers at this point and that he really shouldn't make idol threats.

I asked Mr. Andert what happened. He told me that when they came in the house he thought they were monsters. Mr. Andert stated that he grabbed the first and was going to throw him out the door and that's when he was hit. Mr. Andert stated that didn't stop me, I still tried to put them out the door again.

At this point myself, Det. Duff, and Kevin checked the backyard for evidence and then the attic and found nothing. Checking in and around the house, we could not smell the P.A. smell except at the northeast corner of the front yard where the blue van was setting. Kevin stated several times while we were looking around that he knew that it had to be the van but refused to say anymore about it.

Reporting Officer	I.D.#
Cpl. Larry Traweek	#533

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN and	§	
KENNETH LEATHERMAN,	§	
Individually and as Friends of	§	
TRAVIS LEATHERMAN;	§	
GERALD ANDERT; KEVIN	§	
LEALOS and JERRI LEALOS,	§	
Individually and as Next	§	
Friends of SHANE LEALOS and	§	
TRAVOR LEALOS; PAT LEALOS;	§	
DONALD ANDERT; and	§	
LUCY ANDERT,	§	
	§	Plaintiffs
	§	CIVIL ACTION
vs.	§	NUMBER
	§	CA4-89-842-K
THE TARRANT COUNTY	§	
NARCOTICS INTELLIGENCE	§	
AND COORDINATION UNIT;	§	
TIM CURRY, in his Official	§	
Capacity as Director of the	§	
Tarrant County Narcotics	§	
Intelligence and Coordination	§	
Unit; TARRANT COUNTY, TEXAS;	§	
DON CARPENTER, in his Official	§	
Capacity as Sheriff of Tarrant	§	
County, Texas; CITY OF LAKE	§	
WORTH, TEXAS; and CITY OF	§	
GRAPEVINE, TEXAS,	§	
	§	Defendants

MOTION FOR PROTECTIVE ORDER

(Filed June 7, 1990)

TO THE HONORABLE DAVID O. BELEW, JR., JUDGE:

THE TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT; TIM CURRY, in his Official Capacity as Director of the Tarrant County Narcotics and Intelligence Unit; TARRANT COUNTY, TEXAS; and DON CARPENTER, in his Official Capacity as Sheriff of Tarrant County, Texas; Defendants, in the above numbered and entitled cause respectfully move this Court pursuant to Rule 26(c) FED. R. CIV. PROC., for a Protective Order directing that discovery propounded by the Plaintiffs not be had, and alternatively, that discovery propounded by Plaintiffs be stayed pending a decision on Defendants' Motion to Dismiss or for Summary Judgment for cause as follows:

I.

This Motion for Protective Order is addressed to Plaintiffs' Amended Request for Production of Documents served on Defendants on May 22, 1990. Plaintiffs request production of the following:

Any and all documents relative to applications for "search and arrest" warrants, including but not limited to the "search and arrest" warrants themselves, the "search and arrest" affidavits, and the returns indicating the results of the execution of such warrants, since the formation of the Tarrant County Narcotics Intelligence and Coordination Unit in 1988, which

1. were initiated as a result of the detection of "odors associated" with the operation of an illegal drug manufacturing laboratory; and

a. were prepared at the request of or by members of the Tarrant County Narcotics Intelligence and Coordination Unit, or

b. which resulted in the issuance of search or arrest warrants in which personnel of the Tarrant County Narcotics Intelligence and Coordination Unit participated in executing such search or arrest warrants in either a primary or secondary capacity.

A true copy of Plaintiff's Amended Request for Production of Documents is attached hereto as Exhibit "A", and is incorporated herein by reference for all purposes as though set forth in its entirety.

The above requested documents specifically pertaining to the searches of the premises of Plaintiffs herein have been previously provided to Plaintiffs in Defendants' Motion to Dismiss or for Summary Judgment in this cause. Plaintiffs' Request for Production seeks the files in unrelated searches conducted by the N.I.C.U. both before and after the incidents made the basis of this action.

II.

Defendants should not be required to produce the documents and tangible things requested at this time because:

1. Defendants' Motion to Dismiss or for Summary Judgment, which is potentially dispositive of the case, is pending;

2. Plaintiffs' Request for Production demands production of all documents associated with search warrants in other unrelated cases not relevant to the issues in this cause and is not reasonably calculated to lead to the discovery of admissible evidence in this cause. The only issue to which such could relate is the issue of "policy" or "practice" of Defendants to seek search warrants based primarily upon the detection of "odors associated with" the clandestine manufacture of illegal drugs. At least for purposes of the pending Motion to Dismiss or for Summary Judgment of Defendants, this is a fact which must be deemed admitted. Hence, Plaintiffs' attempted discovery, if relevant at all, which Defendants deny, is at best premature at this time and such should be deferred until this disposition of Defendants' Motion. It may be that this will never become a disputed issue or it is also possible that because of the disposition of the Defendants' Motion that this burdensome and expensive discovery will never be necessary in this cause. This is particularly important because of the very doubtful relevance of the requested documents and tangible things and the expense of obtaining them, if such can be done at all.

3. The files requested concern the investigative files of a law enforcement agency in both active and closed investigations and ongoing prosecutions, and, hence, are privileged;

4. Plaintiffs' Request for Production will subject Defendants to undue burden and expense. The location

and production of these files would be unduly burdensome and oppressive because they are not indexed as to the basis of the issuance of a probable cause warrant. Further, they are not maintained in any central location but are located in a warehouse, in the Office of the Criminal District Attorney in the custody of the individual prosecutors handling the case, and at the N.I.C.U. main office. There is no way to ascertain which drug investigation files involve search warrants based primarily on detection of "distinctive odors" associated with clandestine drug labs, and each drug case file would have to be examined individually. It is estimated that some 3,000 to 3,500 such files would have to be physically examined to comply with this request. Extensive use of law enforcement personnel would have to be employed. Attached hereto as Attachment B is the Affidavit of Brett Carr, Assistant District Attorney, and it is incorporated by reference herein for all purposes as though set forth herein in full. The extreme burden to Defendants of such an effort balanced against the dubious possibility of obtaining any relevant material to Plaintiffs in this case far outweighs the benefits to Plaintiffs; and

5. Plaintiffs' Request for Production is overly broad and seeks all documents and tangible things related to the obtaining of the search warrants, which would include the investigative files of Defendant N.I.C.U., a law enforcement agency, which are privileged, and would contain information as to confidential informants, investigative procedures, as well as attorney work product in the individual cases;

IV.

This Motion for Protective Order does not substitute for or constitute the Defendants' answers, objections or other responses to Plaintiffs' specific discovery requests and all such specific responses are preserved.

WHEREFORE, Defendants move this Court to grant this Motion for Protective Order directing that discovery propounded by the Plaintiffs not be had, or, in the alternative, that discovery requested by Plaintiffs be stayed pending a decision on Defendants' Motion to Dismiss or for Summary Judgment, or that such discovery be had upon such terms and conditions as the Court shall consider appropriate.

Respectfully submitted,
TIM CURRY
CRIMINAL DISTRICT
ATTORNEY
TARRANT COUNTY, TEXAS

/s/ Barrie Howard
BARRIE HOWARD
Assistant District Attorney
State Bar No. 10061720
200 West Belknap
Fort Worth, TX 76196-0201
(817) 334-1233

/s/ Van Thompson, Jr.
VAN THOMPSON, JR.
Assistant District Attorney
State Bar No. 19960000
200 West Belknap
Fort Worth, TX 76196-0201
(817) 334-1233

ATTORNEYS FOR TARRANT
COUNTY, TEXAS, AND
TARRANT COUNTY
NARCOTICS INTELLIGENCE
AND COORDINATION UNIT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Motion for Protective Order was this day served upon the attorney of record for Plaintiffs, Don Gladden, Law Offices of Don Gladden, P.O. Box 50686, Fort Worth, Texas, 76105-1497 in accordance with the provisions of Rule 5, FED. R. CIV. PROC.

Dated this 7th day of June, 1990.

/s/ Barrie Howard
BARRIE HOWARD

CERTIFICATE OF CONFERENCE

I hereby certify that on this the 7th day of June 1990, I have conferred with the attorney of record for Plaintiffs concerning this matter and that we are unable to agree concerning the scope or timing of discovery in this matter. Therefore, this motion is contested.

/s/ Van Thompson, Jr.
VAN THOMPSON, JR.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN, ET AL)
VS.) CIVIL
) ACTION NO.
TARRANT COUNTY NARCOTICS) CA-89-842-K
INTELLIGENCE AND)
COORDINATION UNIT, ET AL)

PLAINTIFFS' AMENDED REQUEST FOR
PRODUCTION OF DOCUMENTS

TO: The Tarrant County Narcotics Coordination and Intelligence Unit and Tarrant County, Texas, Defendants, by and through their attorney, Van Thompson, Jr., Assistant District Attorney, 200 West Belknap St., Fort Worth, Texas 76196-0201

The following Request for Production of Documents is made pursuant to Rule 34, Federal Rules of Civil Procedure. Plaintiffs hereby request that each such document, record, or other written material within the possession, custody, control or constructive possession, custody and control of Defendants and their attorneys be made available for inspection and copying within 30 days from service hereof in the office of Plaintiffs' attorney, Don Gladden, 2814 Avenue D, Fort Worth, Texas, 76105, or some other mutually agreeable location.

Definitions

The term "document" shall refer to all writings and materials of any kind, including, but not limited to,

orders instructions, reports, directives, summaries, interviews, complaints, statements (whether signed or unsigned), transcripts, regulations, memoranda, notes, correspondence, diagrams, maps and drafts. "Document" also refers to records including, but not limited to, photographs, microfilm, videotape, audiotape, motion pictures, microfilm, microfiche, tape computer runs and any codes necessary to comprehend such runs of any nature however produced or reproduced, and any other electronic or mechanical recording. "Document" includes originals and copies.

"Defendants" shall mean the Tarrant County Narcotics Intelligence and Coordination Unit, Tarrant County, Texas, their agents and employees, including but not limited to District Attorney Tim Curry, Assistant District Attorney Ann Diamond, Assistant District Attorney Brent A. Carr, their attorneys and/or anyone acting on their behalf.

Documents Requested

Any and all documents relative to applications for "search and arrest" warrants, including but not limited to the "search and arrest" warrants, themselves, the "search and arrest" affidavits, and the returns indicating the results of execution of such warrants, since the formation of the Tarrant County Narcotics Intelligence and Coordination Unit in 1988, which

1. were initiated as a result of the detection of "odors associated" with the operation of an illegal drug manufacturing laboratory; and

a. were prepared at the request of or by members of the Tarrant County Narcotics Intelligence and Coordination Unit, or

b. which resulted in the issuance of search or arrest warrants in which personnel of The Tarrant County Narcotics Intelligence and Coordination Unit participated in executing such search or arrest warrants in either a primary or secondary capacity.

Respectfully submitted,

LAW OFFICES OF DON GLADDEN
P.O. Box 50686
Fort Worth, Texas 76105
817-531-3667

By: /s/ Don Gladden
DON GLADDEN

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the attorney for Defendants in accordance with the Federal Rules of Civil Procedure on this 22nd day of May, 1990.

/s/ Don Gladden
DON GLADDEN

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORTH WORTH DIVISION

CHARLENE LEATHERMAN and §
KENNETH LEATHERMAN, §
individually and as friends of §
TRAVIS LEATHERMAN; §
GERALD ANDERT; KEVIN §
LEALOS and JERRY LEALOS, §
Individually and as Next Friends §
of SHANE LEALOS and TRAVOR §
LEALOS; PAT LEALOS; DONALD §
ANDERT; and LUCY ANDERT, §
Plaintiffs §

vs. §

THE TARRANT COUNTY §
NARCOTICS INTELLIGENCE §
AND COORDINATION UNIT; §
TIM CURRY, in his Official §
Capacity as Director of the §
Tarrant County Narcotics §
Intelligence and Coordination §
Unit; TARRANT COUNTY, TEXAS §
DON CARPENTER, in his Official §
Capacity as Sheriff of Tarrant §
County, Texas; CITY OF LAKE §
WORTH, TEXAS; and CITY OF §
GRAPEVINE, TEXAS, §
Defendants §

CIVIL ACTION
NUMBER
CA4-89-842-K

AFFIDAVIT OF BRENT CARR

THE STATE OF TEXAS §
 §
 COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, on this day personally appeared BRENT CARR, who by me having been duly sworn made the following affidavit:

My name is Brent Carr. I am above the age of 21 years, fully competent to make this affidavit, and have personal knowledge of the matters of material fact hereinafter set forth, which are true and correct.

I am the Chief Prosecutor of the Tarrant County Narcotics Coordination and Intelligence Unit. I am familiar with the operations and records of this law enforcement agency. I am an attorney and licensed to practice law in the State of Texas.

Affidavits for search warrants are prepared by the individual officers assigned to the N.I.C.U. under the supervision of the supervising officers in their sector. No central index of these warrants is maintained. Investigative case files are kept by the name of the defendants involved or by the police offense number. These files are kept as to ongoing investigations by the investigating officer at his office. When an N.I.C.U. officer seeks to file charges he forwards a case report to the central N.I.C.U. The report is reviewed by one of the N.I.C.U. criminal prosecutors. If the prosecutor decides to file charges he does so and this results in the creation of a prosecution file which bears both the defendant's name and a case number. Attached hereto

is a true copy of a case screen which is representative of the information available in an individual case upon filing by the prosecutor. The N.I.C.U. prosecutor then decides whether the case will be retained by the N.I.C.U. for prosecution or forwarded to the Office of the District attorney for prosecution by a general felony prosecutor. If the case is forwarded to the Office of the District Attorney, it is first assigned to a Grand Jury attorney for presentation to the Grand Jury. Upon indictment the case is assigned to a felony trial attorney for prosecution and disposition. Upon ultimate disposition the prosecutorial file is closed and stored in the warehouse. Thus, prosecutorial files are located in four locations: N.I.C.U., the Grand Jury, the trial section, or the warehouse. From the time of its inception in January 1988 the N.I.C.U. has filed some 3,366 cases. However, the method of drug seizure is never administratively recorded.

There is no record maintained as to whether the individual cases even involve the use of a search warrant much less what information such was based upon, such as the detection of the distinctive odor associated with the manufacture of amphetamines. In order to ascertain whether individual cases involved the use of such a warrant it would be necessary to physically inspect each individual file. This would involve great expenditure of time and effort by personnel. It would be very difficult to estimate the amount of time which would be required to accomplish such a search of the records.

The investigative files of the N.I.C.U. officers files themselves could contain information

In addition evaluations made by reviewing attorneys are contained in these files the discovery of which could cause the disclosure of the attorneys work product.

The practice of relying upon the detection by a qualified police officer of the distinctive odors associated with the illegal manufacture of controlled substances as probable cause for the securing a search warrant when testified to before a magistrate is considered to be authorized by *Johnson v. United States*, 333 U.S. 10, 13 (1948); *Moulden v. State*, 576 S.W. 2d 817, 819-20 (Tex. Crim. App. 1978); *Tardiff v. State*, 548 S.W.2d 380, 383 (Tex. Crim. App. 1977).

Further, Affiant Sayeth not.

/s/ Brent R. Carr
BRENT CARR

SWORN to and subscribed before me by the said
Brent Carr, on this the 6th day of June, 1990.

/s/ Glenda Birdwell
Notary Public in and for
the State of Texas

SEAL

/s/ Glenda Birdwell
Notary's Printed Name

My commission expires: 9-8-92

EXHIBIT B
Att 1

BASIC CASE DATA

CID=0228036
NAME=

CASE NO=0395685
DOB= 07-14-39

AGE= 50 RACE= W SEX= M

NOT IN JAIL

ADDRESS:

BLOCK S STREET/PO BOX APT CITY ST ZIP
5700 BEACH ST FORT WORTH TX

OFFENSE CODE= 350030

OFFENSE= AGG POSS W/INT DEL C/S

OFFENSE DATE= 01-10-90 FILING DATE= 01-11-90

FILING AGENCY CODE= 52

FILING AGENCY= DEPT. PUBLIC SAFETY VOL/PAGE=

OFFENSE RPT NO.= NIB89107

CASE REMARKS=1/16/90 BOND SET
 DOCKET NO=0395685A INDICTMENT DATE= 04-19-90
 COURT= CDC3 DIR/CT= CDC3

DATE/NEXT

PRELIM COURT APPR= PRELIM COURT=
 RECOM BOND AMOUNT= HOLD

WARRANT NO =

ACTUAL BOND AMT= 100000.00

BONDSMAN= BOX, DAVID

COMPANION CASES: 0395680 0395686 0395694

DEF ATTY= PROSCTR= CARR, BRENT A

DATE/NEXT COURT APPR= 06-25-90

DISPOSITION= REV ATTY= CARR, BRENT A
 DISP DATE= FINE PAID= Y

SENTENCE= SENTENCE DATE= PROBATION TERM=
 PF3-COMPLAINT, PF4-CLST APPEAL=

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF TEXAS
 FORT WORTH DIVISION

CHARLENE LEATHERMAN and §
 KENNETH LEATHERMAN, §
 Individually and as Friends of §
 TRAVIS LEATHERMAN; §
 GERALD ANDERT; KEVIN §
 LEALOS and JERRI LEALOS, §
 Individually and as Next Friends §
 of SHANE LEALOS and TRAVOR §
 LEALOS; PAT LEALOS; DONALD §
 ANDERT; and LUCY ANDERT, §

Plaintiffs §

vs. §

THE TARRANT COUNTY §
 NARCOTICS INTELLIGENCE §
 AND COORDINATION UNIT; §
 TIM CURRY, in his Official §
 Capacity as Director of the §
 Tarrant County Narcotics §
 Intelligence and Coordination §
 Unit; TARRANT COUNTY, TEXAS; §
 DON CARPENTER, in his Official §
 Capacity as Sheriff of Tarrant §
 County, Texas; CITY OF LAKE §
 WORTH, TEXAS; and CITY OF §
 GRAPEVINE, TEXAS, §

Defendants §

§ CIVIL ACTION
 § NUMBER
 § CA4-89-842-K

MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

(Filed June 7, 1990)

TO THE HONORABLE DAVID O. BELEW, JR., JUDGE:

THE TARRANT COUNTY NARCOTICS INTELLIGENCE AND COORDINATION UNIT; TIM CURRY, in his Official Capacity as Director of the Tarrant County Narcotics and Intelligence Unit; TARRANT COUNTY, TEXAS; and DON CARPENTER, in his Official Capacity as Sheriff of Tarrant County, Texas; Defendants, in the above numbered and entitled cause respectfully submit herewith their Memorandum in Support of Motion for Protective Order.

PRELIMINARY STATEMENT

By Amended Complaint, filed March 23, 1990, in addition to the original Plaintiffs, a whole new set of parties complaining of an additional entirely different occurrence were added, and the District Attorney and the Sheriff of Tarrant County were added as Defendants in their official capacities only.

Under the Complaint as now amended, both sets of Plaintiffs now assert violation of their constitutional rights guaranteed under the 4th and 14th Amendments of the Constitution to be free of unreasonable search and seizure. Plaintiffs by entirely conclusory allegations also assert that the alleged civil rights violations are the result of failure of the Defendants to properly train law enforcement officers under their control, and that the search and arrest warrants involved "were invalid when issued" and

do not state probable cause because they are based on the detection by the officers seeking the warrants of odors associated with chemicals utilized in the manufacture of illicit drugs by clandestine drug laboratories, which Plaintiffs assert "is insufficient as a matter of law to establish probable cause." Plaintiffs claim damages for emotional distress described as "anger, anguish, sleeplessness, humiliation and embarrassment."

Plaintiffs seek judgment of the Court "vindicating" their rights against unreasonable search and seizure, an unspecified amount of actual damages, and their costs and attorney fees under 42 U.S.C. §1988.

On April 17, 1990, the above-named Defendants filed their Motion to Dismiss or for Summary Judgment. This motion is potentially dispositive of the case. Indeed, a similar motion has previously been granted in this cause, although it was later set aside in order to allow Plaintiffs to replead on the question of "failure to train."

By Amended Request for Production of Documents, served May 22, 1990, Plaintiffs request production of the following:

Any and all documents relative to applications for "search and arrest" warrants, including but not limited to the "search and arrest" warrants, themselves, the "search and arrest" affidavits, and the returns indicating the results of the execution of such warrants, since the formation of the Tarrant County Narcotics Intelligence and Coordination Unit in 1988, which

1. were initiated as a result of the detection of "odors associated" with the operation of an illegal drug manufacturing laboratory; and

a. were prepared at the request of or by members of the Tarrant County Narcotics Intelligence and Coordination Unit, or

b. which resulted in the issuance of search or arrest warrants in which personnel of the Tarrant County Narcotics Intelligence and Coordination Unit participated in executing such search or arrest warrants in either a primary or secondary capacity.

The above requested documents specifically pertaining to the searches of the premises of Plaintiffs herein have been previously provided to Plaintiffs in Defendants' Motion to Dismiss or for Summary Judgment in this cause. Plaintiffs' Request for Production seeks the files in unrelated searches conducted by the N.I.C.U.

ARGUMENT AND AUTHORITIES

This discovery request is not relevant to this case, is not reasonably calculated to lead to the discovery of admissible evidence, and is wholly unnecessary at this time because the only issue such would be relevant to is that of the alleged practice of Defendant N.I.C.U. to seek and obtain search warrants based on the detection of distinctive odors associated with the clandestine manufacture of illegal drugs, such as amphetamines. This practice is deemed admitted for purposes of the pending motion to dismiss or for summary judgment.

It is clear in Rule 26(b)(1) that a matter must be "relevant" in order to be discoverable. The Rule provides that the "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject

matter of the pending action," In considering relevancy the Supreme Court unanimously held in *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978):

The key phrase in this definition - "relevant to the subject matter involved in the pending action" - has been construed broadly to encompass any matter that bears on, or that could reasonably lead to other matter that could bear on, any issue that is or may be in the case. See *Hickman v. Taylor*, 329 U.S. 495, 501, 67 S.Ct. 385, 388-389, 91 L.Ed. 451 (1947). Consistently with the notice pleading system established by the Rules, discovery itself is designed to help define and clarify the issues. *Hickman v. Taylor, supra*, at 500-501, 67 S.Ct. at 388-389. Nor is discovery limited to the merits of a case, for a number of fact related issues may arise during litigation that are not related to the merits.

Nevertheless, the Court refused to order the discovery of the names of the class members because those names had no bearing on the issues in the case and their disclosure "could not be forced into the concept of 'relevancy' described above." Likewise, in the instant cause the production of documents concerning other searches have no bearing on the issues here presented, except for the question of "policy", which is admitted at least for purposes of the pending Motion to Dismiss or for Summary Judgment, and cannot "be forced into the concept of 'relevancy'."

Further, Defendants have a pending Motion to Dismiss or for Summary Judgment which is potentially dispositive of this §1983 case. Hence, Plaintiffs should be required to respond to this motion prior to the making

such tangential at best and burdensome discovery upon Defendants.

Further, the documents requested involve both active investigative files as well as closed or disposed of cases. The files of law enforcement agencies are generally held to be privileged. Notice should be made of the extensive breadth of the definition of "documents" contained in the Request for Production itself.

In addition, this discovery request is overbroad and burdensome and oppressive because the documents Plaintiffs seek cannot be obtained, if indeed at all, except with great difficulty. Such would require the physical inspection of an estimated 3,000 to 3,500 case files located at various locations. There is no one central location at which these documents are maintained, and the documents cannot be located and recovered except with great difficulty and the vast expenditure of the time and labor to physically examine all the files relating to both open and closed N.I.C.U. cases in the Office of the Criminal District Attorney of Tarrant County, Texas, the offices of the N.I.C.U., and the warehouse. Defendants do not have readily available manpower to conduct such a massive search.

The discovery rules vest broad discretion in the District Court with respect to the control of the discovery process and, where necessary, the Courts may grant appropriate orders to deny, limit or qualify discovery in order to protect a party from undue burden or expense or to promote the ends of justice. Rule 26(c), FED. R. CIV. PROC., *Galella v. Onassis*, 487 F.2d 986, 997 (2d Cir. 1973); *General Dynamics Corp. v. Selb Manufacturing Co.*, 481 F.2d

1204 (8th Cir. 1973) *cert. denied* 414 U.S. 1162 (1974); *Chemical and Industrial Corp. v. Druffel*, 301 F.2d 126 (6th Cir. 1962).

It is particularly true that the trial court may prohibit, defer or limit discovery when there is a dispositive motion which could resolve the issues raised. See *Brennan v. Local Union No. 639 Teamsters*, 494 F.2d 1092, 1100 (D.C. Cir. 1974); *Scroggins v. Air Cargo Inc.*, 534 F.2d 1124, 1133 (5th Cir. 1976) (trial court has broad discretion to stay discovery until it rules on summary judgment motion); *New Orleans Public Serv. v. Council of New Orleans*, 833 F.2d 583 (5th Cir. 1987) (trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined).

Further, in the instant cause, Plaintiffs seek production of documents which may reveal the identity of confidential informants. The identity of confidential informants is privileged. *United States v. Tucker*, 380 F.2d 206, 213 (2nd Cir. 1967).

Additionally, investigative files compiled for law enforcement purposes are privileged. See, *Black v. Sheraton Corp. of America*, 564 F.2d 531 (D.C. Cir. 1977); *Brown v. Thompson*, 430 F.2d 1214 (5th Cir. 1970). This privilege is necessary as disclosure of investigatory files would undercut the Government's efforts to prosecute criminals by disclosing investigative techniques, deterring witnesses from coming forward and revealing certain facts of the Government's case. See: *Brown v. Thompson*, *supra* at 1215, wherein the Fifth Circuit upheld the refusal of the trial court to order production of relevant police investigative files:

The appellants concede that they would be unable to recover judgment without more evidence than that which they had been able to obtain. They had been denied access to the police report file on the investigation of the death of Brown. If access to the file was improperly denied it would follow that the judgment of dismissal with prejudice was error.

Government documents are an outstanding example of matter which is privileged and not subject to disclosure. 2B Barron & Holtzoff, Federal Practice and Procedure. p. 288, §1003. It will expire upon the lapse of an unreasonable length of time.

Likewise, in order to defeat a claim of executive privilege it is necessary for the plaintiff to show that the public interest in disclosure in the particular case outweighs the public interest protected by the privilege. Plaintiff must show a particularized need for the documents sought to be discovered in order to overcome the claim of privilege. In *Black v. Sheraton Corp. of America*, supra at 545, the D.C. Circuit held:

Judicial recognition of an executive privilege depends upon "a weighing of the public interests that would be served by a disclosure in a particular case." *Nixon v. Sirica*, 159 U.S.App. at 74, 487 F.2d at 716. A "demonstrated, specific need" for material may prevail over a generalized assertion of privilege, *United States v. Nixon*, 418 U.S. at 713, 94 S.Ct. 3090, but the claimant must make "a showing of necessity sufficient to outweigh the adverse effects the production would engender." *Carl Zeiss*, supra, 40 F.R.D. at 328-29.

Finally, Plaintiffs seek production of documents which are privileged as attorney work product. See *Upjohn Co. v. U.S.*, 101 S.Ct. 677 (1977).

CONCLUSION

Defendants respectfully submit that Plaintiffs' discovery requests concern investigative law enforcement files which are privileged, such are unduly burdensome and oppressive, and that for the reasons heretofore stated and discussed the requested production of Defendants' files should be denied, except to the extent such have already been produced, or at least deferred until disposition of Defendants' pending Motion to Dismiss or for Summary Judgment.

Respectfully submitted,

TIM CURRY
CRIMINAL DISTRICT
ATTORNEY
TARRANT COUNTY, TEXAS

/s/ Barrie Howard
BARRIE HOWARD
Assistant District Attorney
State Bar No. 10061720
200 West Belknap
Fort Worth, TX 76196-0201
(817) 334-1233

/s/ Van Thompson, Jr.
VAN THOMPSON, JR.
Assistant District Attorney
State Bar No. 19960000
200 West Belknap
Fort Worth, TX 76196-0201
(817) 334-1233

ATTORNEYS FOR TARRANT
COUNTY, TEXAS, AND
TARRANT COUNTY
NARCOTICS INTELLIGENCE
AND COORDINATION UNIT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Memorandum in Support of Motion for Protective Order was this day served upon the attorney of record for Plaintiffs, Don Gladden, Law Offices of Don Gladden, P.O. Box 50686, Fort Worth, Texas, 76105-1497 in accordance with the provisions of Rule 5, FED. R. CIV. PROC.

Dated this 7th day of June, 1990.

/s/ Barrie Howard
BARRIE HOWARD

CERTIFICATE OF CONFERENCE

I hereby certify that on this the 7th day of June, 1990, I have conferred with the attorney of record for Plaintiffs concerning this matter and that we are unable to agree concerning the scope or timing of discovery in this matter. Therefore, this motion is contested.

/s/ Van Thompson, Jr.
VAN THOMPSON, JR.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN, ET AL,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION
TARRANT COUNTY NARCOTICS	§	NO. 4-89-842-A
INTELLIGENCE AND	§	
COORDINATION UNIT, ET AL,	§	
Defendants.	§	

ORDER

(Filed Dec. 31, 1990)

Came on to be considered:

1. Motion for Protective Order; and
2. Plaintiffs' Motion for Hearing on Defendants' Motion for Protective Order.

The court has concluded that there is no need for a hearing on the motion for protective order, which is supported by an affidavit.

The court, therefore, ORDERS that plaintiffs' motion for hearing on defendants' motion for protective order should be, and it is hereby, denied.

The court has determined that the protective order sought by defendants The Tarrant County Narcotics Intelligence and Coordination Unit, Tim Curry, in his official capacity as director of the Tarrant County Narcotics and Intelligence Unit, Tarrant County, Texas, and Don Carpenter, in his official capacity as Sheriff of Tarrant

County, Texas, should be granted. The court is of the opinion and finds that if said defendants were to be required to respond to the request for production of documents to which such motion for protective order is directed defendants would be put to undue burden, expense and annoyance, and there would be a serious risk that the law enforcement efforts of the defendants in this case would be inappropriately compromised if the discovery sought by plaintiffs were to be allowed.

The court, therefore, ORDERS that said motion for protective order should be, and it is hereby, granted, and that defendants need not make production in response to Plaintiffs' Amended Request for Production of Documents, which was served on defendants in May 1990.

SIGNED December 31, 1990.

/s/ John McBryde
JOHN McBRYDE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHARLENE LEATHERMAN, ET AL,	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION
TARRANT COUNTY NARCOTICS	§	NO. 4-89-842-A
INTELLIGENCE AND	§	
COORDINATION UNIT, ET AL,	§	
Defendants.	§	

FINAL JUDGMENT

(Filed Jan. 22, 1991)

For the reasons given in the memorandum opinion and order signed by the court contemporaneously with the signing of this final judgment,

The court ORDERS, ADJUDGES AND DECREES that all claims of plaintiffs, Travis Leatherman, acting through Charlene Leatherman and Kenneth Leatherman, as his next friends; Charlene Leatherman; Kenneth Leatherman; Gerald Andert; Donald Andert; Lucy Andert; Pat Lealos; Shane Lealos, acting through Kevin Lealos and Gerri Lealos, as his next friends; Travor Lealos, acting through Kevin Lealos and Jerri Lealos, as his next friends; Kevin Lealos; and Jerri Lealos, against defendants, The Tarrant County Narcotics Intelligence and Coordination Unit; Tim Curry, in his official capacity as Director of Tarrant County Narcotics and Coordination Unit, Tarrant County, Texas; Don Carpenter, in his official capacity as Sheriff of Tarrant County, Texas; City of Lake Worth, Texas; and

City of Grapevine, Texas, should be, and are hereby, dismissed;

The court further ORDERS, ADJUDGES and DECREES that none of the plaintiffs is to recover anything from any of the defendants; and,

The court further ORDERS, ADJUDGES and DECREES that each defendant shall recover costs of court incurred by him or it, as the case may be, from plaintiffs, jointly and severally.

SIGNED January 22, 1991.

/s/ John McBryde
JOHN McBRYDE
United States District Judge
